

IN THE MATTER OF:
HHHunt Corporation
Petitioner

For the Petition
Rebecca Walker, Esquire
 Attorney for Petitioner

* * * * *

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Filed on March 26, 2012, the Petitioner, HHHunt Corporation, seeks a special exception to permit a domiciliary care home pursuant to §59-G-2.37 of the Montgomery County Zoning Ordinance.

Originally scheduled for a public hearing on October 12, 2012, the hearing was postponed at the request of the Petitioner to October 4, 2013. Exhibits 13, 14, 16(b), 23. The Petitioner filed amendments to the petition on July 1, 2013, on September 12, 2013, and at the public hearing. Exhibits 21, 25, 35. A final special exception site plan incorporating all amendments, was submitted on October 4, 2013. Exhibit 37.

Technical Staff, in a memorandum dated September 6, 2013, recommended approval of the petition, subject to specified conditions (Exhibit 24). The Planning Board voted unanimously to recommend approval of the special exception with modified conditions. Exhibit 26. There is no opposition to the petition. The Greater Olney Civic Association (GOCA) and the Sandy Spring Volunteer Fire Department both supported the Petition. Exhibit 24, Attachments B and C.

The record was held open until October 15, 2013, for the Petitioner to submit revised plans incorporating amendments presented at the public hearing. T. 124. These were timely submitted (Exhibit 27) and the record closed on October 15, 2013.

For the reasons that follow, the Hearing Examiner recommends that the petition be approved subject to the conditions set forth in Part V of this Report.

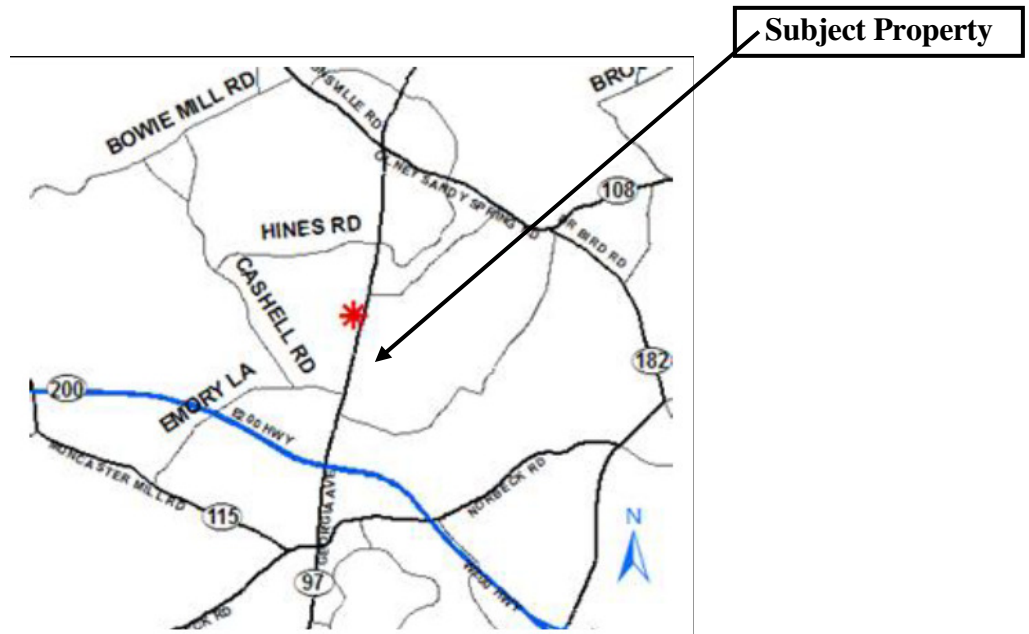
II. FACTUAL BACKGROUND

A. The Subject Property

Zoned Rural Neighborhood Cluster (RNC), the subject property consists of approximately 37.68 acres located on the east side of Georgia Avenue between Old Baltimore Road and Emory Church Road. A vicinity map reproduced from the Technical Staff Report (Exhibit 24) is shown on the following page.

Currently, the property is undeveloped and has some significant environmental constraints. The property slopes from a high point along Georgia Avenue to the south and east. Technical Staff advises

that approximately 93% of the property is forested, and the property is home to two stream channels, a 100-year flood plain, and several wetlands areas. Exhibit 24, p. 5.

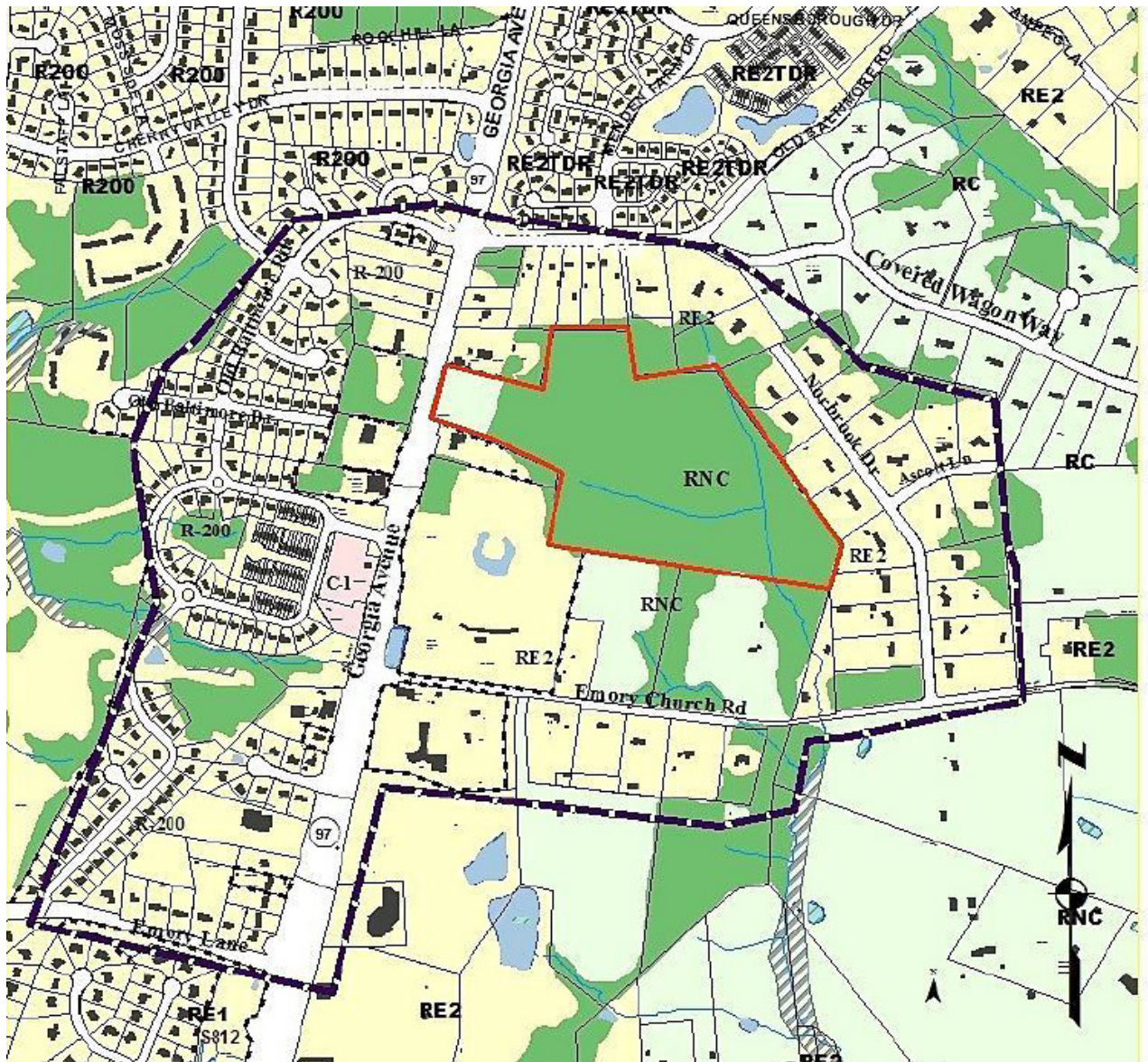


An aerial photograph in the Technical Staff Report (Ex. 24, p. 5) depicts the natural features of the site:



B. The Neighborhood and its Character

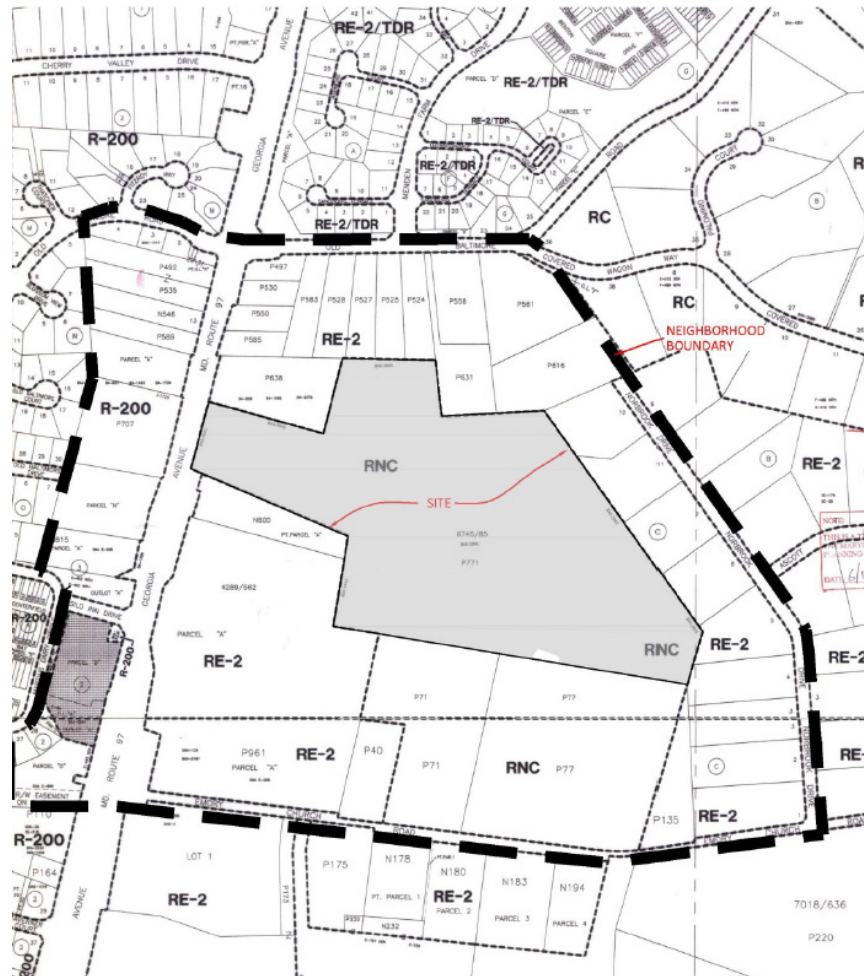
Technical Staff defined the boundaries of the surrounding area for the purpose of determining compatibility of the proposed use. Staff concluded the area is bounded by Old Baltimore Road to the north, Norbrook Drive and Ascot Lane to the east, Old Baltimore Road and Gooseneck Terrace to the west, and Emory Lane and Emory Church Road to the south. The boundaries delineated by Technical Staff are shown below (Exhibit 24, p. 6):



Staff used these boundaries to define the neighborhood for two reasons: (1) it incorporates the intersections included in the Petitioner's traffic statement, and (2) the boundaries are consistent with the neighborhood defined for a 2012 special exception for a domiciliary care facility directly across Georgia Avenue. Exhibit 24, p. 6. Technical Staff characterizes the neighborhood as a mix of large and smaller lot single family homes in the RE-2 and R-200 zones and non-residential uses clustered around Georgia Avenue. According to Staff, the "predominant characteristic" is a "variety of institutional and non-residential uses housed in low-rise buildings along both sides of Georgia Avenue, with low-density residential developments concentrated behind the non-residential uses." Exhibit 24, p. 25. Non-residential uses on the west side of Georgia Avenue include a small neighborhood shopping center, a church, a day care center, a Verizon building, and another (64-bed) domiciliary care home directly opposite the subject property. The Sandy Spring Volunteer Fire Station adjoins the southern border of the subject property and a historic property, the Berry-MacKall House, adjoins the property's northern boundary along Georgia Road. A golf park is another non-residential use in the area. Exhibit 24, p. 6.

The Petitioner disagrees with Staff's delineation of the neighborhood. Ms. Jennifer Russel, the Petitioner's expert land planner, opined that the "surrounding area" for zoning purposes should be smaller: Old Baltimore Road on the north, the rear property line of the properties along the west side of Georgia Avenue, and Emory Church Road to the south. According to Ms. Russell, the area zoned R-200 on the west side of Georgia Avenue is very different in character from the RE-2 development located along Norbrook Road. The area includes a "mélange" of residential and non-residential uses, with non-residential uses serving the neighborhood clustered along Georgia Avenue. The single family homes on the east side of Georgia were built between 1950 and 1985 and have a mix of wood, siding and brick materials. They are generally one- and two-story, lower scale suburban homes. The non-residential uses on either side of Georgia Avenue vary in terms of style and building materials. The fire department, located immediately south of the subject property, is a two-story, wood-

constructed building with a brick façade. According to Ms. Russel, the single-family homes on both sides of Georgia Avenue use the non-residential services that line Georgia Avenue and combine to create the character of the neighborhood. T. 18-20.



**Petitioner's Delineation of
Surrounding Area
Exhibit 11**

Ms. Russel testified that Staff's definition of the surrounding area is no longer valid because of the installation of a traffic signal at Emory Church Road. Mr. Michael Lenhart, the Petitioner's expert in traffic engineering, testified that he had been the traffic engineer for the domiciliary care special exception directly to the west of the property across Georgia Avenue. At the time of that approval, the signal at Georgia Avenue and Emory Church Road had not been installed. While a traffic study was not necessary for that project, he opined that it was likely that the transportation area

had been defined by the next traffic light to the south, thus expanding the delineation of the surrounding area. T. 67.

The Hearing Examiner finds that the two different delineations do not make a significant impact on the characterization of the neighborhood, but will accept the Petitioner's delineation for the reasons stated. Based on the evidence, the neighborhood is characterized by varied, low-scale non-residential and institutional uses clustered along Georgia Avenue, with smaller one to two-story single family homes behind those uses.

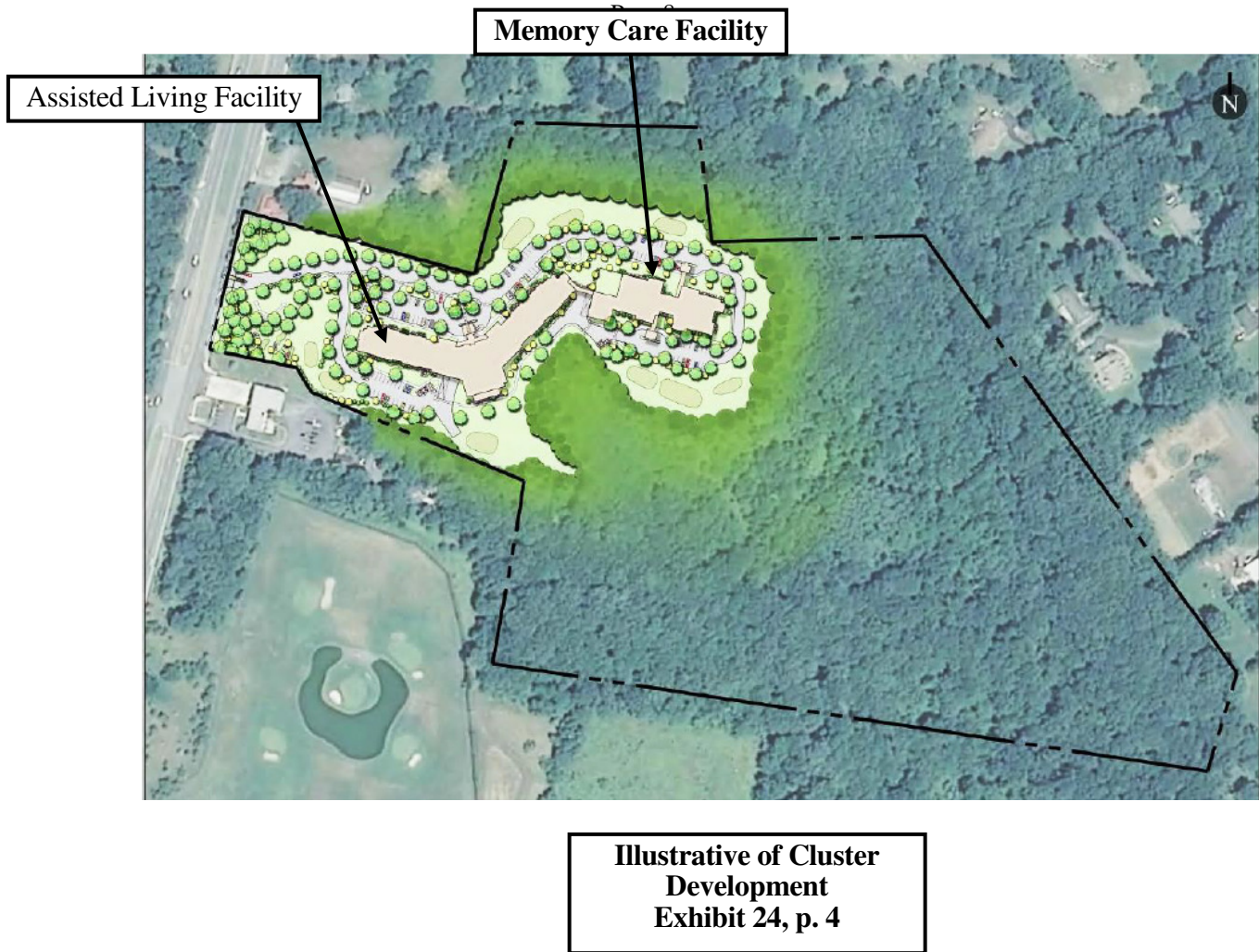
C. Proposed Use

1. Petitioner's Concept

Petitioner proposes to construct a 107-unit domiciliary care facility of two stories located on the portion of the site closest to Georgia Avenue. Originally designed as a one-story building, the Petitioner amended its plans to the two-story configuration to preserve more of the environmental features of the property. This "clustering" concept is demonstrated in the illustration included in the Technical Staff Report (Ex. 24, p. 4), shown on the next page.

The facility will be developed with two care components connected by an enclosed walkway. Located closest to Georgia Avenue, the assisted living facility will consist of 136,736 square feet housing 85 patients on three levels (because of the sloping grade, the bottom level is similar to a "walk-out" basement). T. 100. The eastern segment will provide "special" or "memory" care, (i.e., care for Alzheimer's patients) on two levels totaling 40,832 square feet. Exhibit 24, p. 7.

Ms. Russel testified that the facility will maintain the residential character of the neighborhood. According to her, individuals will only see the roof from Georgia Avenue for several reasons. The building will be setback approximately 300 feet from the right-of-way line along Georgia Avenue and is aligned so that the façade facing Georgia Avenue is only 75 feet wide. The grade of the site slopes



downward and extensive landscaping will surround the entrance. T. 22-23. An illustrative rendering of the view toward the facility from Georgia Avenue (Exhibit 25(n)(i)), submitted by the Petitioner, is shown on the following page.

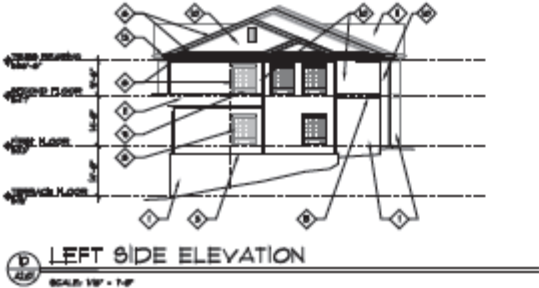
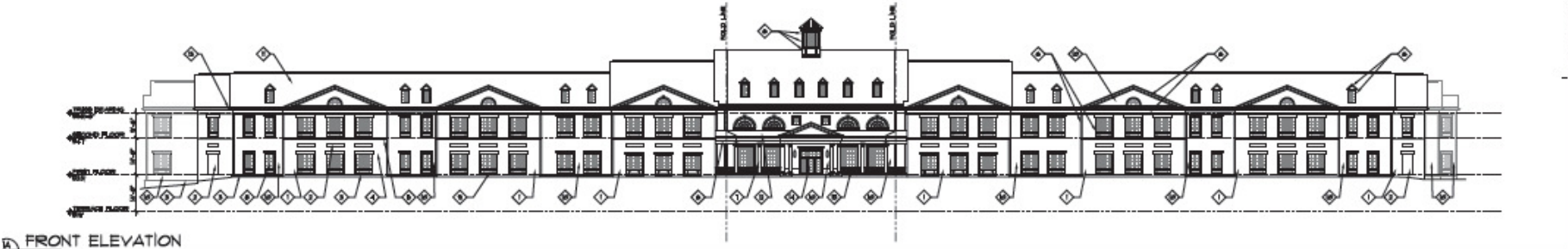
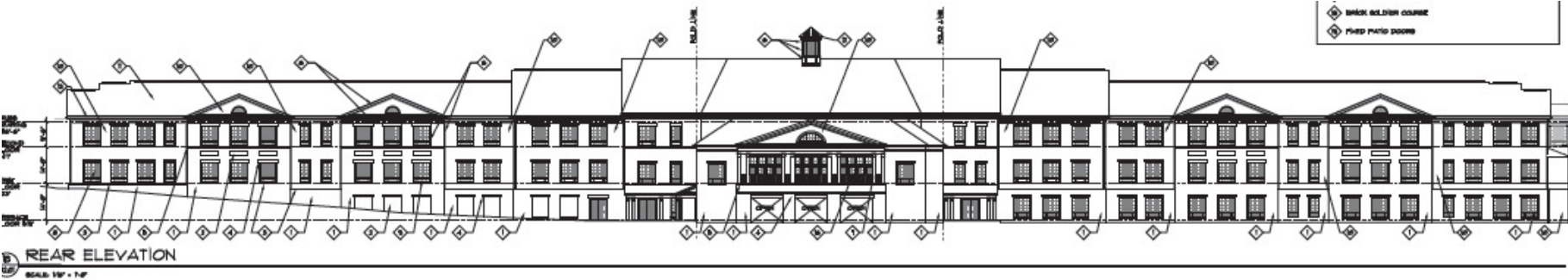
The Petitioner's architect, Mr. Edward Winks, Jr., testified that the two components appear as one building designed to be very residential in nature. The Georgia Avenue façade appears as a two-story residential structure because of its narrow width. The scale of the other façade is broken up with residential elements using materials such as brick and siding similar to those in the surrounding neighborhood. T. 98-100. Illustrative renderings showing the façades (Exhibit 25(n)) from Georgia Avenue and the walkway between the two components are reproduced on the following page. Architectural elevations of the façade are shown on page 10.



**Conceptual Rendering of View
from Georgia Avenue
Exhibit 25(n)(ii)**



**Conceptual Rendering of Walkway Connecting
the Assisted Living Facility and the Specialty
Care Facility
Exhibit 25(n)(iii)**



Mr. Winks described the floor plans for the building. He testified that, for the assisted living facility, he took advantage of the existing grade by creating a subterranean level similar to a walkout basement. This will include the kitchen and a theater, staff and support facilities, laundries, medical offices, therapy areas, and an indoor pool or spa. They have attempted to use windows in locations which will be visited by the residents, especially along the area facing the environmentally sensitive features of the site.

The main level will have a central entrance with residential units on each end. Each end will have a small sitting area. Common spaces include a living room off the entrance and a café that leads to a sunroom. The dining room has an outdoor terrace overlooking the green space to the east, with a small server. A private dining room and a wellness area (similar to a fitness center) are also located on this level.

Individual apartments for the residents are located above the main level on two wings. Also included are small stores, a puzzle room, a salon, and a multi-roomed library. He stated that this is the most extensive amenity package the Petitioner has ever provided in one of its assisted living facilities. The residential units will be both one-bedroom and studio units. Each has a kitchenette and bathroom, but they expect that everyone will be eating in the main dining room. T.101-102.

The memory care building has a central entrance as well. Although initially designed on one level, he was able to put everything on two levels at the request of the neighbors. Essentially, this building has two first floors, each having its own serving kitchen and support facilities and a living room at each end that connects to an outdoor terrace area. There is also a family room, nurse's facilities, and an activity room on each floor. The most prominent exterior feature is the elevated porch, although the building has been fragmented into residential scale components. Different types of windows are used throughout the facilities to break up the scale, including arched windows in the library. He opined that the proposed development will not cause objectionable noise, vibration, odor, dust or fumes. T. 104-106. Floor plans for both facilities are shown on the next page.

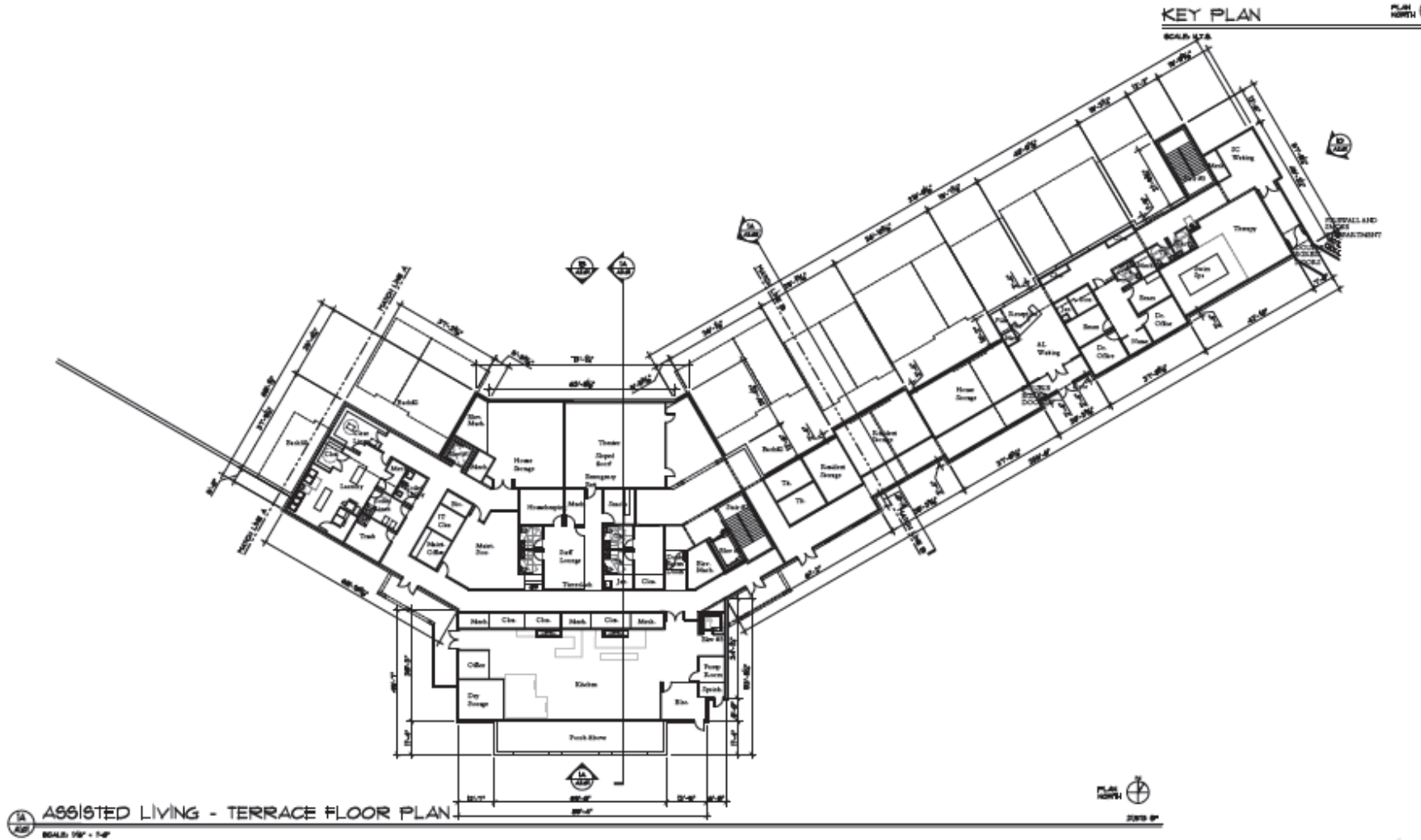


Exhibit 25(g)(1)

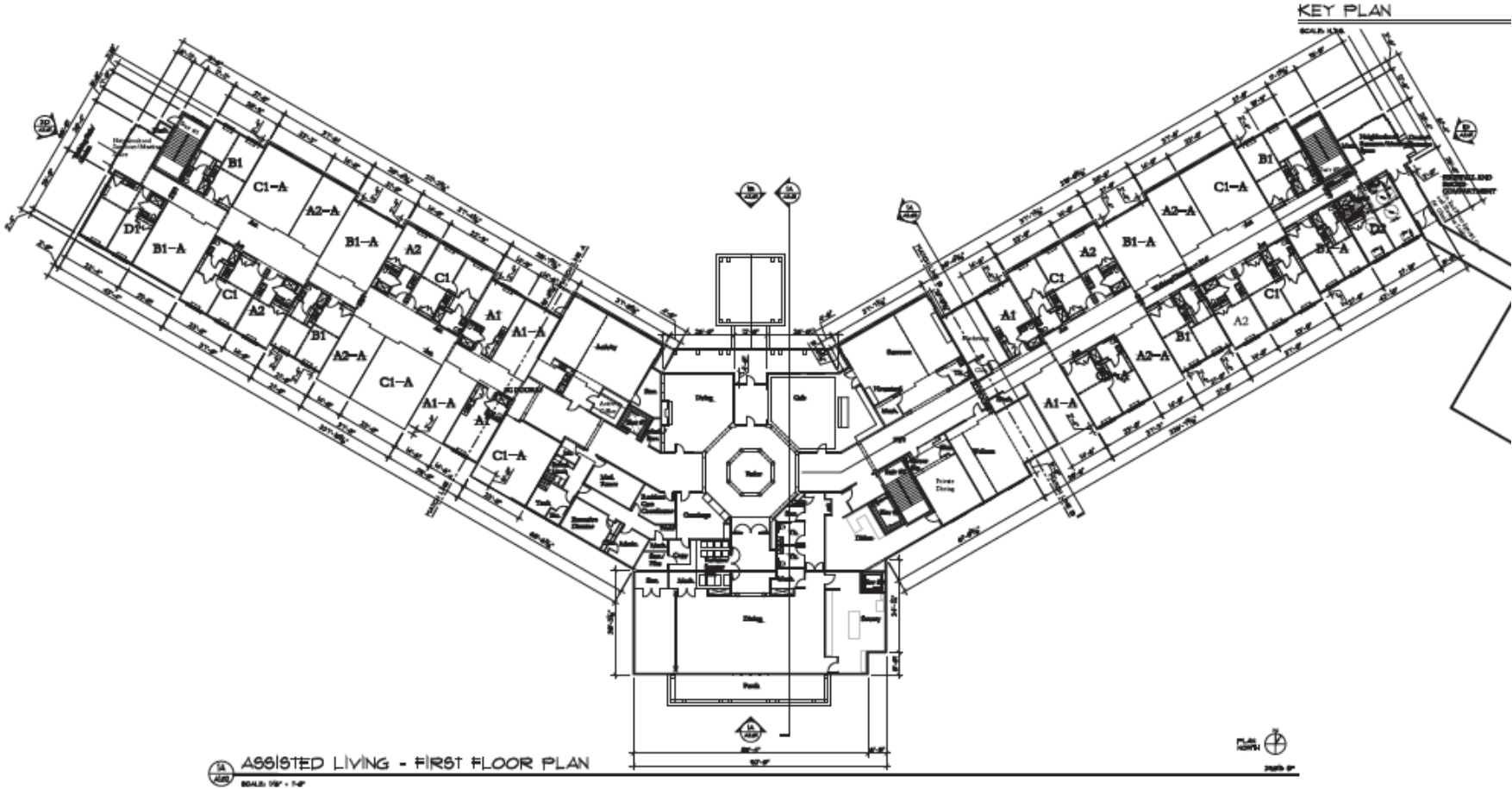


Exhibit 25(g)(2)

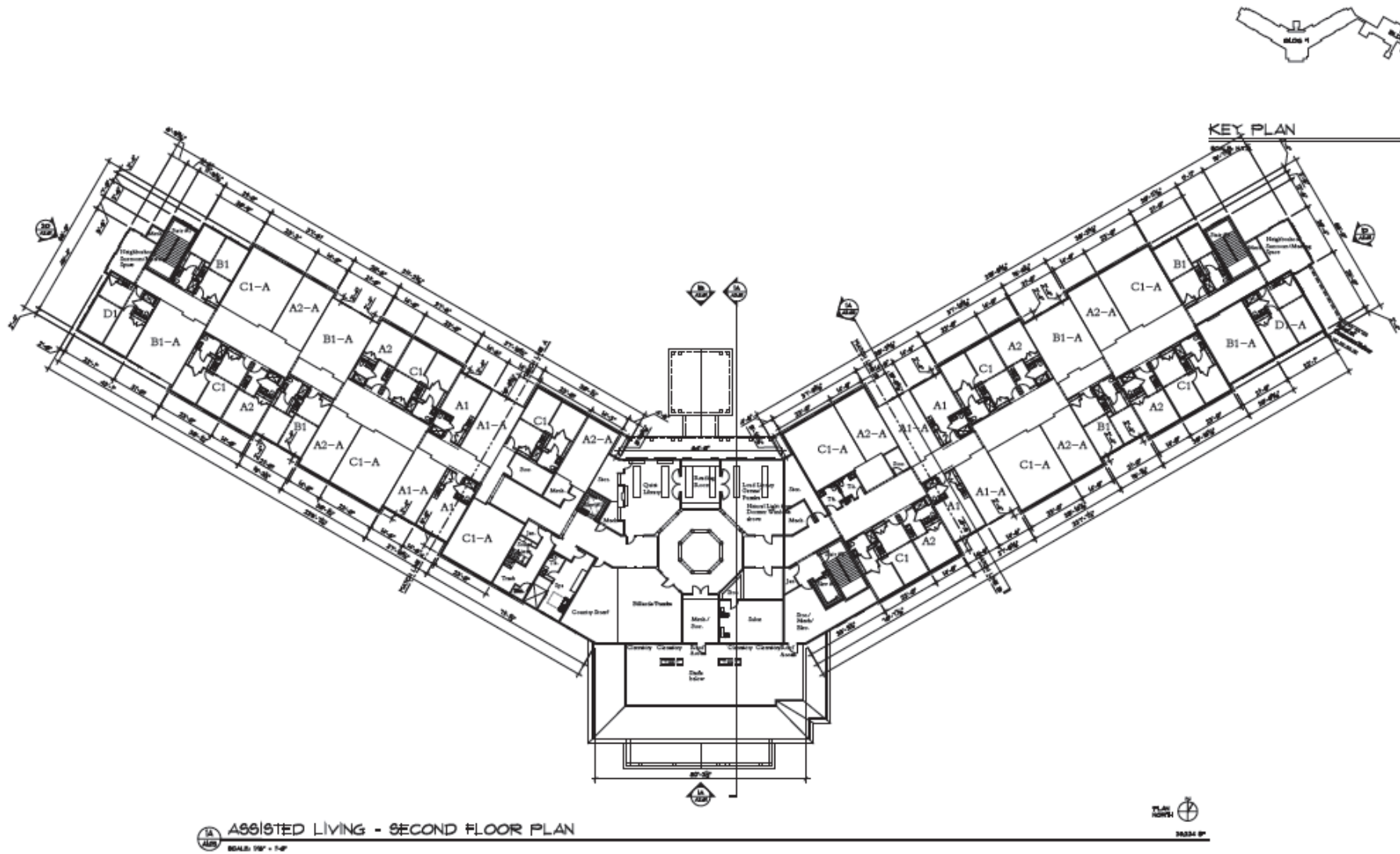


Exhibit 25(g)(3)

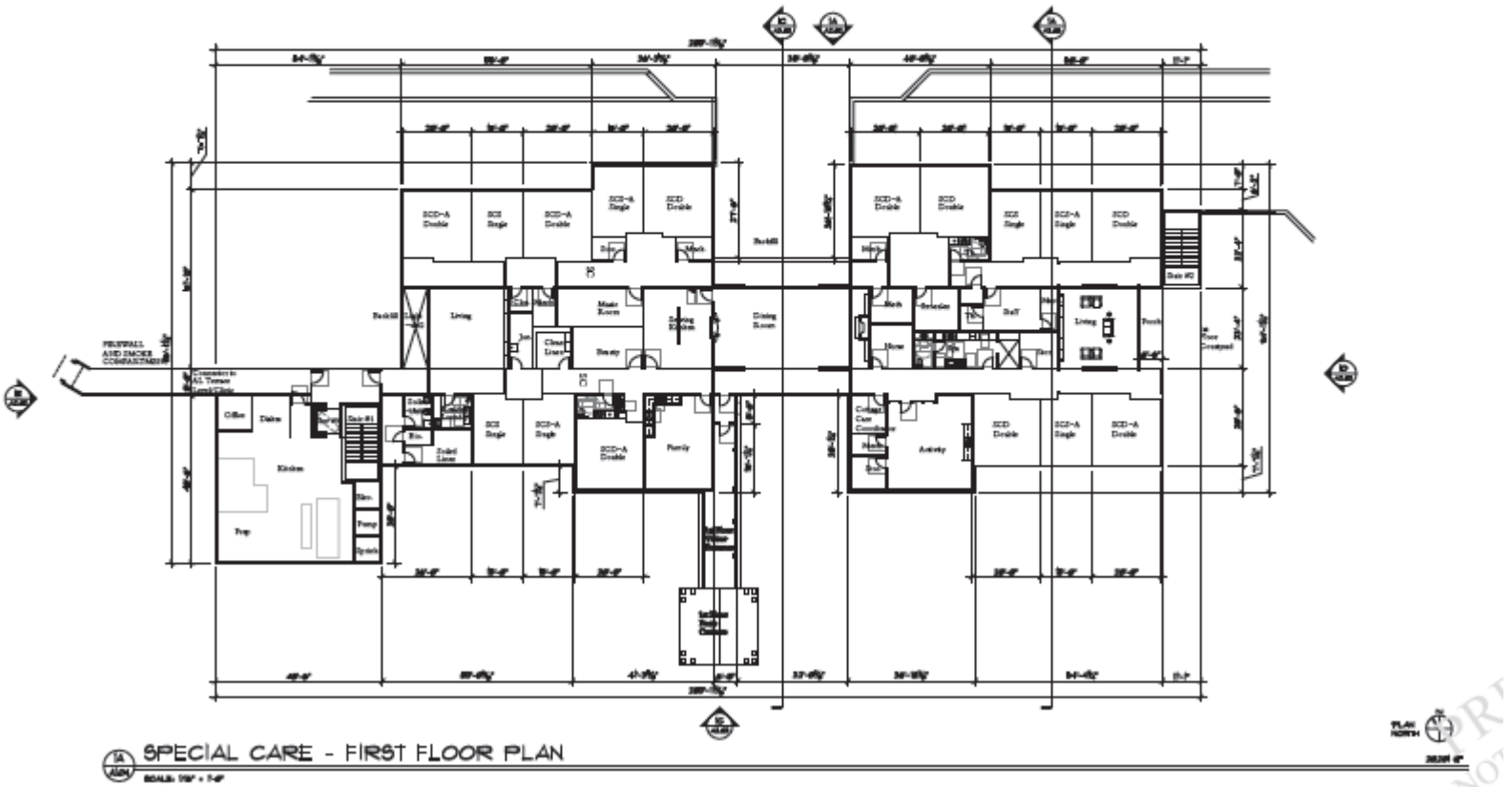


Exhibit 25(g)(4)

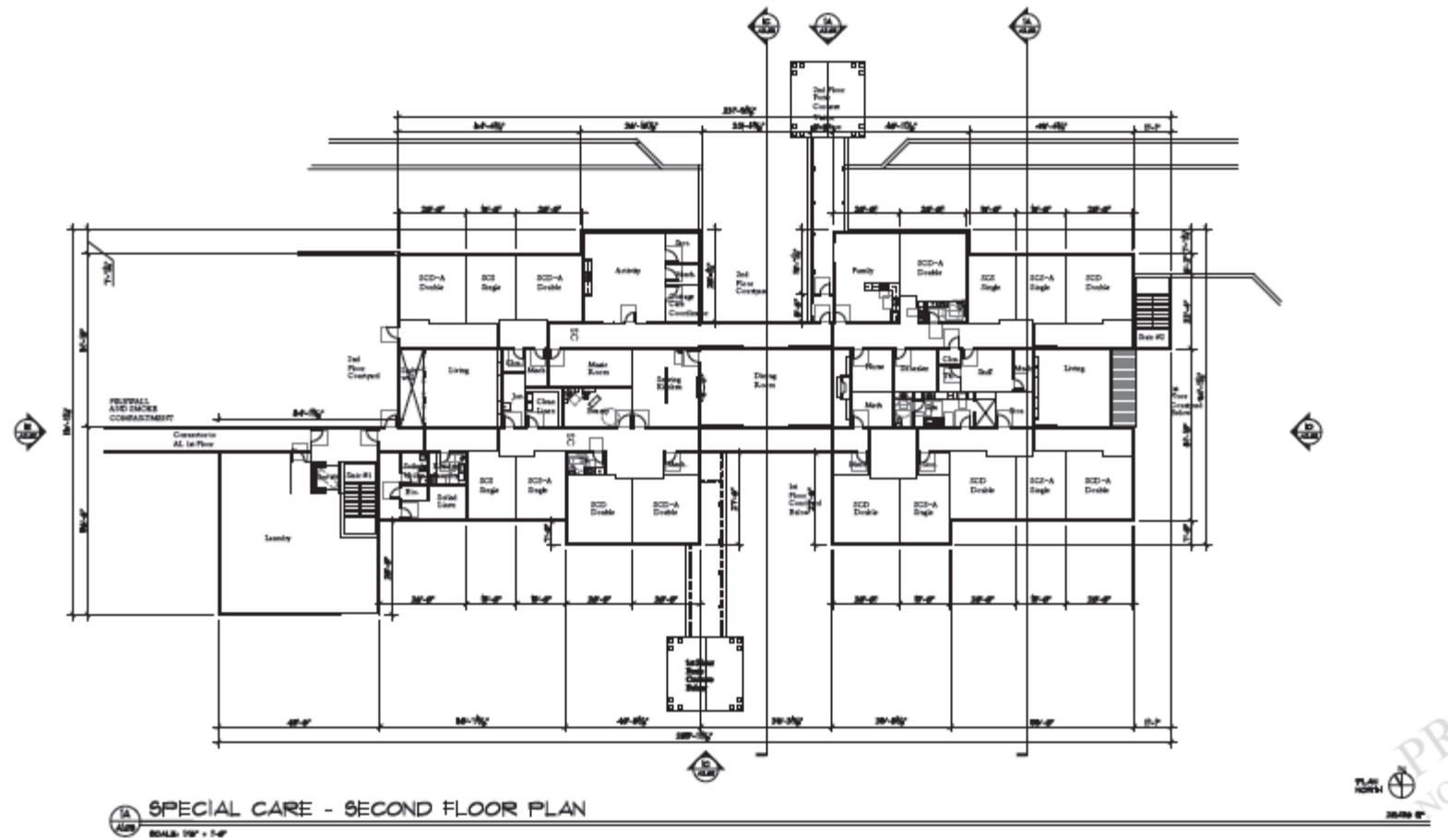


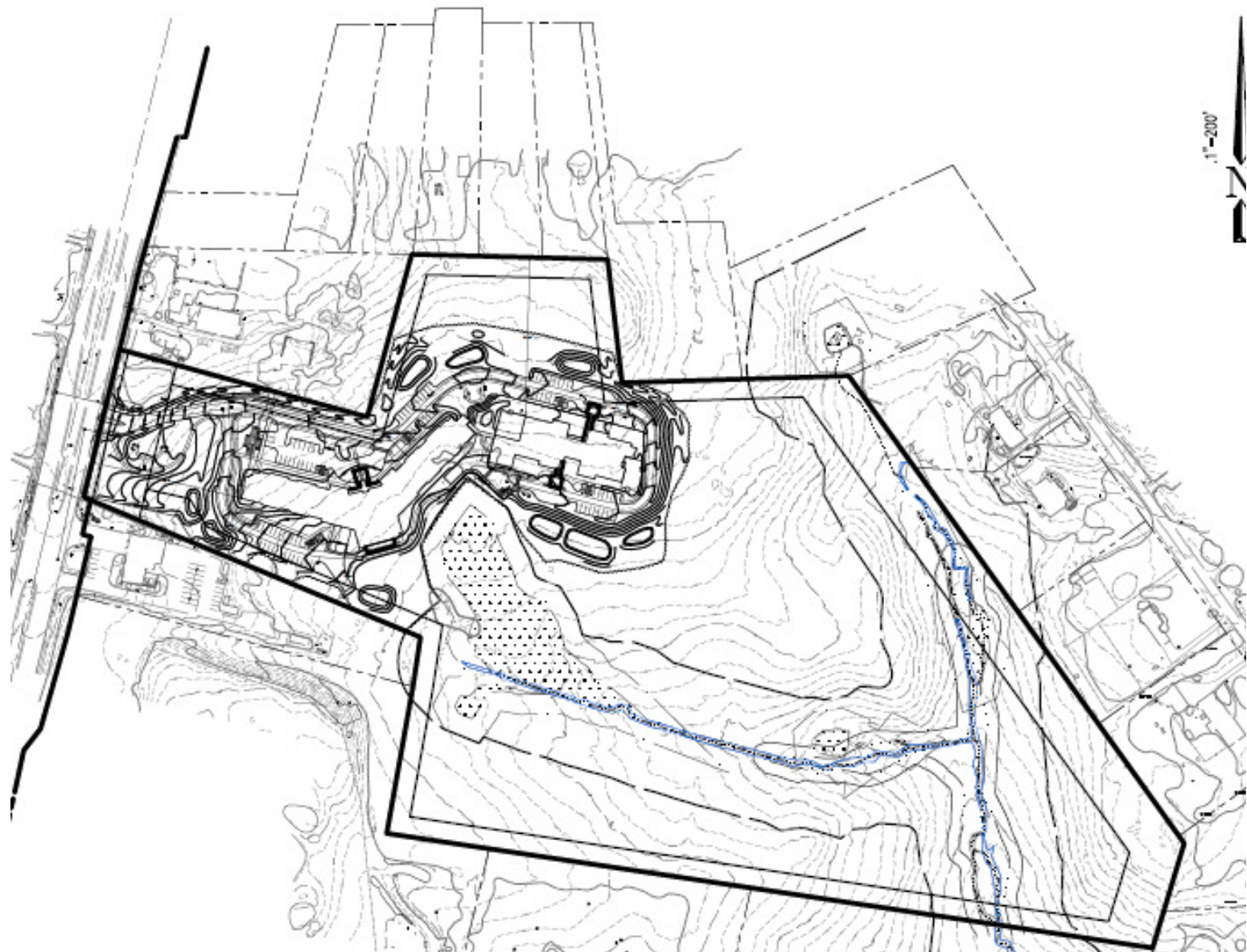
Exhibit 25(g)(5)

2. The Site Plan

As noted, the site plan shows the building located close to Georgia Avenue, thus preserving the majority of the site as forest. Technical Staff advises that access will be provided from Georgia Avenue by a 48-foot wide divided driveway that narrows to 24 feet in the interior of the property. It extends approximately 220 feet before splitting into two driveways that encircle the two buildings. There are five parking areas along the driveway and five-foot sidewalks (expanding to 7 feet near parking areas for handicapped access) leading to several gathering places near the buildings. There are two loading areas in the rear (southern side) of the building. Exhibit 24.

The proposed use will be developed under the optional cluster method of development in the RNC Zone. The purpose of the Zone is to preserve large areas of contiguous rural open space that is consistent with the recommendations of the applicable Master Plan. *Montgomery County Zoning Ordinance*, §59-C-9.57. As a result, the Zone mandates that rural open space comprise between 65% and 85% of the tract area. *Id.*, §59-C-9.574. Technical Staff reports that common open space may be credited toward meeting the rural open space requirement. Exhibit 24, pp. 14-15. Open space shown on the site plan totals 31.80 acres, or 84% of the tract area and is located primarily on the northern, eastern, and southern portions of the site. *Id.* Excerpts from the Site Plan (Exhibit 37) are shown on the following pages.

The facility exceeds the development standards required by the optional method of cluster development in the RNC Zone. Those applicable to the proposed development require a minimum land area of 10 acres and minimum setbacks of 15 feet from the right-of-way. The property is 37.68 acres and the building is setback 307.6 feet from the Georgia Avenue right-of-way. The Master Plan calls for an additional buffer of 100 feet along Georgia Avenue. The Zoning Ordinance requires a rear yard setback of 30 feet and side yard setbacks of 17 feet; the proposed facility has a rear setback of 430.5 feet and the smallest side yard setback is 106.11 feet. Thus, the proposed use significantly exceeds all of these parameters. T. 24-25.



Site Plan (Sheet 1)
Exhibit 37



Site Plan (Sheet 4)
Exhibit 37

3. Landscaping and Lighting

Mr. Frank Bossong, IV, the Petitioner's expert in civil engineering, presented the lighting plan proposed for the property (Exhibit 25(d), reproduced on pp. 24-25 of this Report. He opined that, because the RNC Zone is an agricultural zone, the residential standard for lighting at the property line (i.e., 0.1 foot candles) does not apply to this use. Nevertheless, the photometric study demonstrates, in his opinion, that this standard will be met.

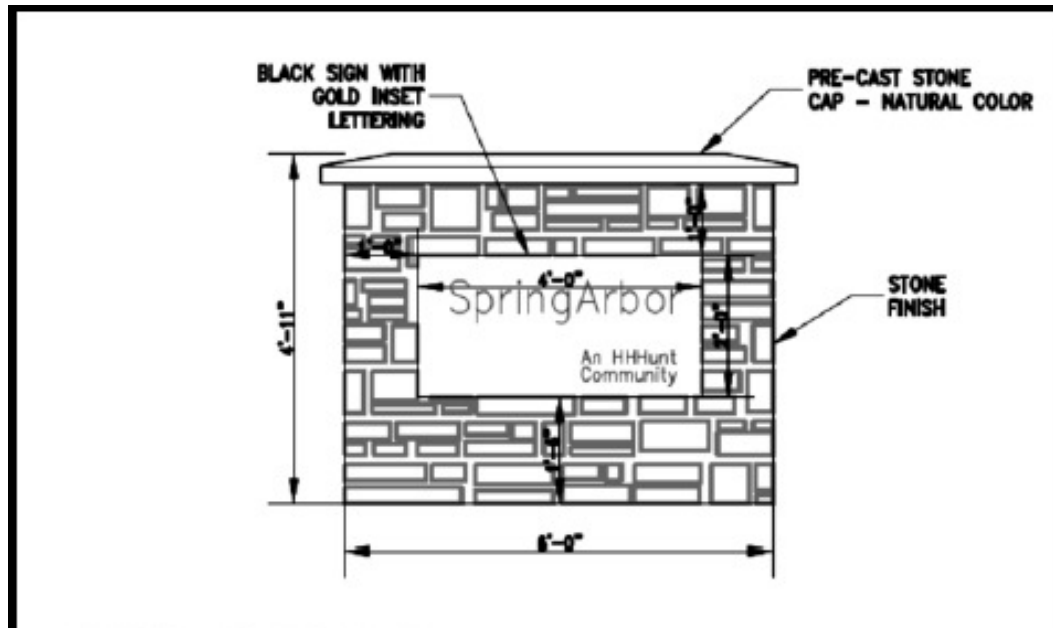
The light poles within the parking area will be a maximum of 15 feet high, including the light fixtures. Technical Staff advises that the fixtures are full cut-offs, which are designed to direct light downward.

The Petitioner's Landscape Plan (Exhibit 25(c)) proposes extensive landscaping along Georgia Avenue to minimize the visibility of the project from the road. Exhibit 24, p. 15. A copy of the Landscape Plan is shown on pages 26-29 of this report. Staff reports that the proposed shading for the paved surfaces exceeds the minimum requirement by providing 33.7% of shade over internal drives, thus reducing visual impact from Georgia Avenue and the urban heat island effect. Staff concluded that the loading areas and dumpsters located in the rear (i.e., southern side) of the property are sufficiently screened by the existing tree line. *Id.*

4. Signage

Petitioner proposes to place a 29.52 square-foot monument sign at the Georgia Avenue access drive. Initially, Staff advised that a variance from the sign standards in the Zoning Ordinance may be required, applying the sign standards for residential zones. Exhibit 24. The Planning Board's recommendation, however, notes that Staff corrected this at the Planning Board hearing because the RNC Zone is an agricultural zone. As a result, the conditions recommended by the Hearing Examiner do not require the Petitioner to obtain a variance from the sign requirements. Mr. Cook, the Petitioner's representative, testified that all other signs on the site will be solely directional signs. The type of

monument sign proposed is included in the Technical Staff Report (Exhibit 24, p. 20), shown on the following page.



**Proposed Monument Sign
Exhibit 24**

Technical Staff concluded that the size of the monument size was appropriate for the area because of the property's wide frontage along Georgia Avenue and the amount of traffic on that road.

Exhibit 24, p. 20.

**Lighting Plan Legend
Exhibit 25(d)**

STATISTICS

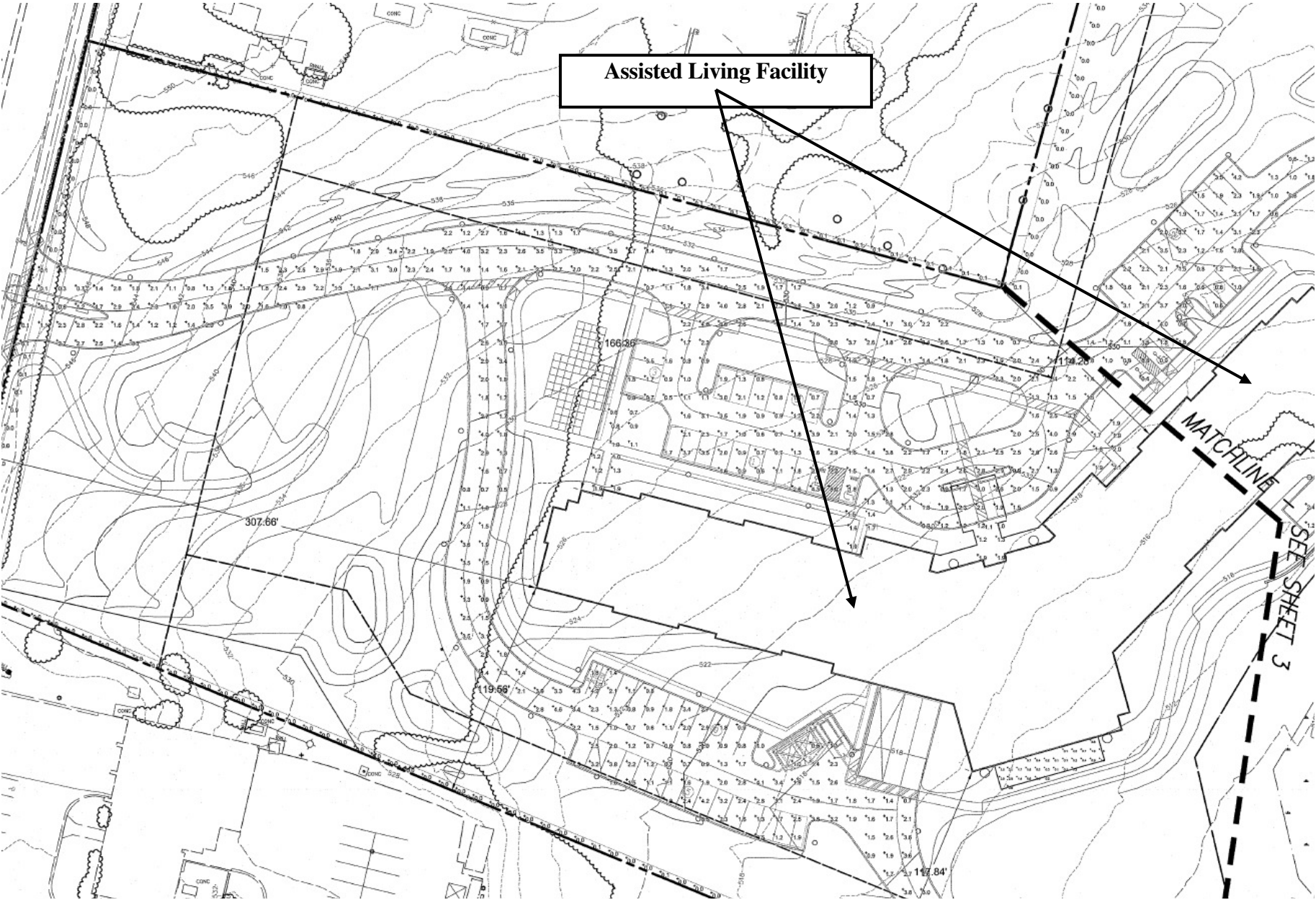
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
Calc Zone #1	+	1.9 fc	4.6 fc	0.4 fc	11.5:1	4.8:1
Property Line	+	0.0 fc	0.5 fc	0.0 fc	N / A	N / A

LUMINAIRE SCHEDULE

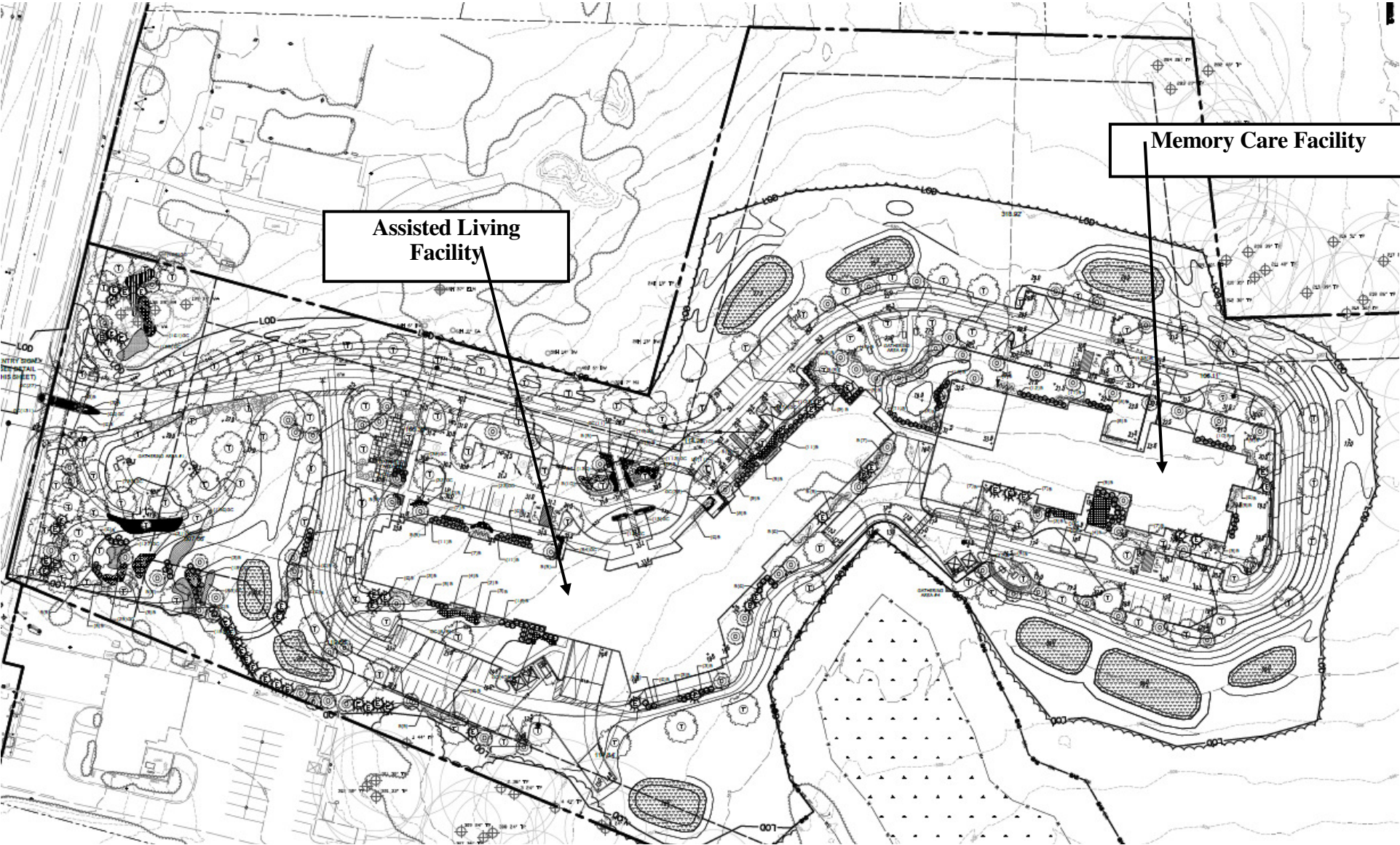
Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
○	A	64	AUL0704KASXL3X	FCO LED POST TOP SERIES	70W LED ARRAY	AUL0704KASX L3X.ies	Absolute	0.81	70
□	B	8	AUL0704KASXL5X	FCO LED POST TOP SERIES	70W LED ARRAY	Symmetric.ies	Absolute	0.81	70
○	WALL	5	AUL0704KASXL3X	FCO LED POST TOP SERIES	70W LED ARRAY	AUL0704KASX L3X.ies	Absolute	0.81	70



**Lighting Plan/Sheet 3/Memory Care and Portion of
Assisted Living Facilities
Exhibit 25(d)**



Lighting Plan/Sheet 2/Assisted Living Facility
Exhibit 25(d)



Landscape Plan (Sheet 1)
Exhibit 25(c)





Plant List						
KEY	BOTANICAL NAME	COMMON NAME	SIZE	CONDITION	COMMENTS	QUANTITY
Trees						
T	Acer rubrum	Red Maple	8 - 10'	B&B		19
	Acer rubrum 'October Glory'	October Glory Maple	8 - 10'	B&B		4
	Betula nigra 'Heritage'	Heritage River Birch	8 - 10'	B&B		13
	Gleditsia triacanthos inermis 'Trueshade'	Thornless Honey Locust	8 - 10'	B&B		27
	Liquidambar styraciflua 'Rotundiloba'	Round-Lobed Sweet Gum	8 - 10'	B&B		8
	Quercus phellos	Willow Oak	8 - 10'	B&B		2
	Zelkova serrata 'Green Vase'	Sawleaf Zelkova	8 - 10'	B&B		49
	TOTAL:					122
Evergreen Trees						
E	Ilex opaca	American Holly	6 - 8'	B&B	heavy specimen	7
	Ilex x attenuata 'Fosteri'	Foster's Holly	6 - 8'	B&B	heavy specimen	32
	Thuja occidentalis 'Emerald'	Emerald Arborvitae	6 - 8'	B&B	heavy specimen	9
	TOTAL:					48
Ornamental Trees						
O	Cornus florida	Eastern Dogwood	8 - 10'	B&B	specimen	4
	Hamamelis virginiana	Common Witch Hazel	8 - 10'	B&B	specimen	6
	Lagerstroemia indica 'Catawba'	Catawba Crate Myrtle	8 - 10'	B&B	specimen	12
	Lagerstroemia x 'Natchez'	Natchez Crape Myrtle	8 - 10'	B&B	specimen	17
	Magnolia virginiana 'Greenbay'	Sweet Bay Magnolia	8 - 10'	B&B	specimen	12
	Prunus x okame	Okame Cherry	8 - 10'	B&B	specimen	33
	TOTAL:					84
Shrubs						
S	Azalea Girard Hybrid 'Girard's Rose'	Girard Azalea		3 Gal.		
	Berberis thunbergii 'Crimson Pygmy'	Crimson Pygmy Barberry		3 Gal.		
	Hydrangea quercifolia	Oakleaf Hydrangea		3 Gal.		
	Ilex glabra	Inkberry Holly		3 Gal.		
	Ilex glabra 'Compacta'	Compact Inkberry		3 Gal.		
	Ilex verticillata	Winterberry		3 Gal.		
	Lindera benzoin	Spicebush		3 Gal.		
	Myrica pensylvanica	Northern Bayberry		3 Gal.		
	Nandina domestica					
	'Harbour Dwarf'	Dwarf Heavenly Bamboo		3 Gal.		
	Photinia x fraseri	Red Tip Photinia		3 Gal.		
	Piers japonica	Valley Valentine Japanese Pieris				
	'Valley Valentine'	Pieris		3 Gal.		
	Prunus laurocerasus					
	'Otto Luyken'	Otto Luuykens Laurel		3 Gal.		
	Prunus laurocerasus					
	'Schipkaensis'	Schipka Laurel		3 Gal.		
	Rhododendron x 'Gumpo Pink'	Gumpo Pink Azalea		3 Gal.		
	Rosa shrub 'Knock Out'	Knock Out Rose		3 Gal.		
	Viburnum denatum	Arrowwood Viburnum		3 Gal.		
	TOTAL:					572
Groundcover						
GC	Eupatorium fistulosum	Joe Pye Weed				
	Hemerocallis x 'Stella de Oro'	Stella de Oro Daylily				
	Iris versicolor	Blue Flag				
	Liriope muscari 'Big Blue'	Big Blue Lilyturf				
	Lobelia cardinalis	Cardinal Flower				
	Ophiopogon japonicus	Mondo Grass				
	Panicum virgatum	Switch Grass				
	Rudbeckia fulgida 'Goldstrum'	Goldstrum Black-eyed Susan				
	TOTAL (Sq ft):					5363

**Plant List
Landscape Plan
Exhibit 25(c)**

5. Operations

The Petitioner proposes to have a total of 100 employees working on different shifts 24 hours a day, seven days per week. A summary of the different shifts from the Technical Staff Report (Exhibit 24, p. 7) is below:

Assisted Living and Special Care Staff Summary		
Administrative staffing (Monday-Friday)	Resident Care Staffing (Monday-Friday)	Resident Care Staffing (Saturday and Sunday)
8:00 a.m.—4:00 p.m.	6:00 a.m.—2:00 p.m.	7:00 a.m.—3:00 p.m.
9:00 a.m.—5:00 p.m.	7:00 a.m.—3:00 p.m.	3:00 p.m.—11:00 p.m.
	8:00 a.m.—4:00 p.m.	11:00 p.m.—7:00 a.m.
	11:00 a.m.—7:00 p.m.	
	3:00 p.m.—11:00 p.m.	
	11:00 p.m.—7:00 a.m.	

The Petitioner has agreed to a condition recommended by both Technical Staff and the Planning Board to limit the maximum number of employees that may be on-site at one time to 50 employees. Staff advises that the most number of employees will be present between 9:00 a.m. and 5:00 p.m., Monday through Friday. Mail will be delivered daily between 10:00 a.m. and 3:00 p.m. Food deliveries are made by semi-trucks and trailer up to three times per week; non-food items are delivered approximately once per week. *Id.* at 8.

Mr. William Robert (Bo) Cook, Jr., the Petitioner’s representative, testified that there will also be events throughout the year for families to come and share with the residents. These will be held at off-peak hours and will be structured around traffic congestion. They typically will have a “bulk” move-in when the facility first opens that occurs over the first four weeks. These move-ins typically do not exceed more than 30 residents a day, and may normally be about 10 per month. Once the building is initially filled, they generally have four to five move-ins per month. These move-ins would be scheduled during off-peak hours as well. T. 112-113.

According to Mr. Cook, the facility has a very sophisticated security system that monitors the movements of the assisted living residents and a more intense system for the memory care patients. The building will be fully sprinklered and they will have fire alarms throughout. The outdoor courtyards in the memory care building are secured and have sitting areas and a small walking path. These are monitored by cameras and staff stations located nearby. T. 114.

Mr. Cook testified that the facility will have an emergency generator large enough to preserve prepared food and to maintain heating and cooling in certain areas. The generator is located on the southern side of the assisted living building near the service entrance on the lower level. It will be in an enclosure next to the dumpster. They use a generator powered by natural gas because that type of generator operates more quietly than other designs on the market. T. 118-119.

6. Public Facilities and Parking

a. Public Facilities:

As the property has never been subdivided, it will be required to obtain preliminary plan approval under Chapter 50 of the Montgomery County Code. Exhibit 24. Therefore, pursuant to Zoning Ordinance §59-G-1.21(a)(9)(A), the Planning Board and not the Board of Appeals will ultimately determine the adequacy of public facilities. However, this section also requires that “approval of a preliminary plan of subdivision must be a condition of granting the special exception.” Such a condition is recommended in Part V of this report.

Nevertheless, the evidence introduced in this case supports the conclusion that the impact on public facilities will be compatible with the neighborhood and that Petitioner will be able to establish the adequacy of public facilities at subdivision. Petitioner’s expert in transportation planning, Michael Lenhart, testified that, using ITE trip generation rates, the proposed use will generate only four morning and seven evening peak hour trips. At the request of Transportation Staff, he reviewed the impact of employee shifts on these rates. Including the employee shifts, he testified that the proposed use will generate only 12 morning peak hour trips and six evening peak hour trips. In his expert

opinion, even though Georgia Avenue is generally a busy corridor, site-generated traffic will have very little impact on existing conditions. Local Area Transportation Review (LATR) guidelines exempt projects generating fewer than 30 peak hour trips from LATR; as a result, no traffic study is required. T. 70-72.

The current Subdivision Staging Policy consists of two tests to determine whether transportation facilities are adequate. Transportation Policy Area Review (TPAR) looks at roadway and transit adequacy within the applicable policy area. Under the current TPAR, there is a 25% deficit in transit capability for the policy area. Because of this, the Petitioner will be required to pay a traffic impact tax to be used to mitigate that transit deficit, which the Petitioner is willing to do. T. 69.

He stated that the State Highway Administration (SHA) requested the Petitioner to perform a site distance analysis. T. 73. Based on his analysis, site distance will exceed SHA requirements and the SHA has accepted this analysis, as indicated in a letter from SHA concluding that the sight distance meets SHA requirements (Exhibit 25(q)).

Mr. Bossong testified that other facilities will be adequate to serve the proposed use. All of the dry utilities (e.g., electricity, telephone, etc.) are located along Georgia Avenue. Police and fire utilities are adequate. There is a full police station to the south along Georgia Avenue and a satellite office at the intersection of Georgia Avenue and Route 108. The Sandy Spring Volunteer Fire Company adjoins the property along the southern property boundary. T. 93. The Petitioner met with representatives of Montgomery County Fire and Rescue Services, who have tentatively approved the location of the access drive. According to Mr. Bossong, this will be reviewed in more detail at site plan review. The access road is a private driveway that will be maintained by the Petitioner. T. 94.

He described the public water and sewer lines near the property. There is an existing 16-inch pressure water line within Georgia Avenue and an existing 8-inch sewer line just south of the entrance to the fire station.

Mr. Bossong testified that the property's original water/sewer category was W-6/S-6. The Planning Board and Department of Permitting Services have conditionally approved a category change to W-1/S-3. The category change approval requires the Petitioner to cluster development as depicted on the site plan as is discussed more fully in Part II.D. of this Report, relating to compliance with the Master Plan.

The Petitioner proposes to utilize public water and sewer to serve the development. Because the existing water line is already pressurized, Mr. Bossong opined that there should be no problem hooking up to that line even though the grade of the site slopes downward from Georgia Avenue. The grade prevents the Petitioner, however, from using gravity sewer to hook up to the sewer line within the right-of-way. As a result, the Petitioner proposes to use a pressure system to collect on-site sewage and force it to the gravity line along Georgia Avenue. T. 82-86.

Mr. Bossong further opined that there will be sufficient stormwater management facilities to serve the proposed use. He prepared the preliminary stormwater management concept plan for the facility. According to Mr. Bossong, the development will be subject to new storm water management regulations that require Environmental Site Design (ESD) to the Maximum Extent Practical (MEP). The Petitioner proposes to utilize a three-component, tiered system. The three components include a dry well, which will take the roof water and put it into dry wells to infiltrate back into the ground, porous pavement in the parking areas to permit water to infiltrate into the ground, and bio-retention facilities. The latter are small, low planting areas that collect stormwater and remove the pollutants. These also serve as a ground water recharge facility. T. 77. They prepared the plan, in part, to make sure that storm water management would not impact additional specimen trees or forest on the site. This plan has been submitted to DPS for approval, but no definitive approval has yet been given. DPS verbally indicated that the first stormwater management concept (based on the one-story building with larger coverage) was approvable; as this will have less impact, he opined that this should be approved as well. T. 81. He testified that, while he does not believe approval of a

stormwater management concept plan is required for a special exception, all the current storm water requirements may and will be accommodated on the site. T. 82.

b. Adequacy of Parking Provided:

The amount of parking required on site is established by Zoning Ordinance §59-G-2.37(d):

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

There are a maximum of 135 beds proposed for the domiciliary care facility and 100 employees. Thus, a total of 84 parking spaces are required for the proposed use ($135/4 = 34$, $100/2 = 50$). The Petitioner is providing a total of 99 spaces, including six van-accessible handicap spaces and two other accessible spaces. Technical Staff found that the proposed parking spaces meet the needs of 100 full and part-time employees as well as visitors. Exhibit 24, p. 19.

7. Agency Recommendations

As noted throughout, Technical Staff recommended approval of the application subject to the following 7 conditions:

1. The assisted living facility must be limited to a maximum of 107 units with no more than 135 beds.
2. The total number of employees on the site must not exceed 50 at any one time.
3. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan.
4. The Petitioner must obtain approval of a Preliminary Plan per Chapter 50 of the Montgomery County Code. If changes to the special exception site plan or other related plans are required, the Petitioner must file a copy of the revised special exception site plan and related plans with the Board of Appeals.
5. The Petitioner and Facility must comply with all applications of the County Noise Ordinance (Chapter 31B of the County Code).
6. Garbage/dumpster pick-up must comply with time of day restrictions specified in Chapter 48-solid waste regulations which specify that no pick-ups may occur between 9:00 pm and 7:00 am on any weekday, or between 9:00 pm and 9:00 am on Sundays and federal holidays.
7. A sign permit must be obtained for the proposed monument sign from the Montgomery County Department of Permitting Services (MCDPS). If MCDPS determines that a variance is required, the Petitioner must obtain a sign variance or adjust the design of the proposed sign to conform to

all applicable regulations. A copy of the approved sign permit, along with any revised drawing related to the sign, must be submitted to the Board of Appeals before the sign is posted, and a copy of the permit for the approved sign must be submitted to the Board of Appeals. Exhibit 24, p. 3.

At the Planning Board's public hearing, Staff amended its recommendation to eliminate the need for a sign variance because the property is located in an agricultural rather than a residential zone. Exhibit 26. The Planning Board adopted the finding and recommendations of the Staff, and added an eighth condition (*Id.*):

8. Delivery by semi-trailer trucks to the Facility must not exceed six-times [sic] a week.

D. Master Plan

The subject property lies within the area designated as the Southeast Quadrant in the 2005 *Olney Master Plan* (Master Plan or Plan). The primary land use goals articulated by the Plan include preserving the "low-density character" of Southeast Quadrant and to "provide a wide choice of housing types and neighborhoods for people of all income levels and ages at appropriate densities and locations." Plan, p. 15.

In furtherance of this, the Plan encouraged the use of cluster development to preserve open space and protect environmental features related to the Northwest branch. It recommended (Plan, p. 22):

The Southeast Quadrant contains significant environmental resources including the headwaters of the Northwest Branch. Most of the larger parcels along the stream valleys have already been subdivided and developed. The remaining vacant and redevelopable large parcels are scattered along Batchellors Forest Road, precluding the possibility of a large contiguous open space system in public ownership if park dedication were proposed on future subdivisions. The significant green infrastructure in this area should therefore be protected through conservation easements on key resource areas, especially along streams. This open space will remain in private ownership, with additional stewardship provided by private land trusts, such as the Greater Sandy Spring Green Space, Inc., private landowners, and public conservation easements.

The Plan recommended clustering development near existing sewer lines (*Id.*):

A low-density cluster method of development is the best way to establish the green infrastructure and preserve headwaters and significant forests in this area. Some of the redevelopable properties are located near the existing sewer line in the Batchellors Forest tributary stream valley and should be allowed to receive community sewer service if deemed appropriate by the County Council. Those that require disturbance of stream buffers for anything other than lateral connections are not recommended for zoning requiring community sewer service.

Thus, the Plan's overall objectives for the Southeast Quadrant are (Plan, p. 23):

1. Preserve open space, streams, significant forests, and the low-density character of the Southeast Quadrant through cluster development, on community sewer where appropriate.
2. Promote a zoning pattern that does not require off-site extensions of sewer mains in the stream valleys of Batchellors Forest tributary.
3. Preserve forest in and around the stream valleys of the Batchellors Forest tributary of Northwest Branch on existing residential properties using forest conservation easements and land banking.
4. Rezone all existing LDRC properties to RNC on community water and sewer with 0.2 units per acre. Delete the current LDRC Zone from the Zoning Ordinance.
5. Restore forested stream buffers and wetlands on properties as they redevelop.
6. Connect properties in the quadrant with bikeways, walkways and park trails to enhance pedestrian and bicycle access to parks, schools, and other facilities.
7. Determine the exact amount and configuration of open space to be preserved on each property at the subdivision stage.
8. Protect the rustic road character of Batchellors Forest Road by using topography, clustering of houses away from the road, and landscaping to preclude, or minimize, the visibility of new developments from Batchellors Forest Road.

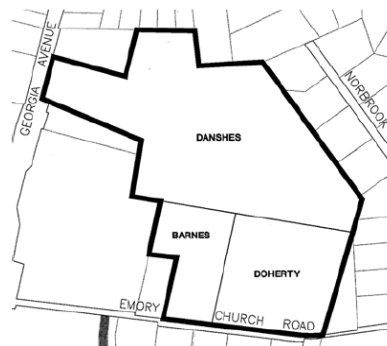
The Master Plan also includes site-specific goals for the subject property (Plan, p. 37):

#13 Danshes and Other Properties

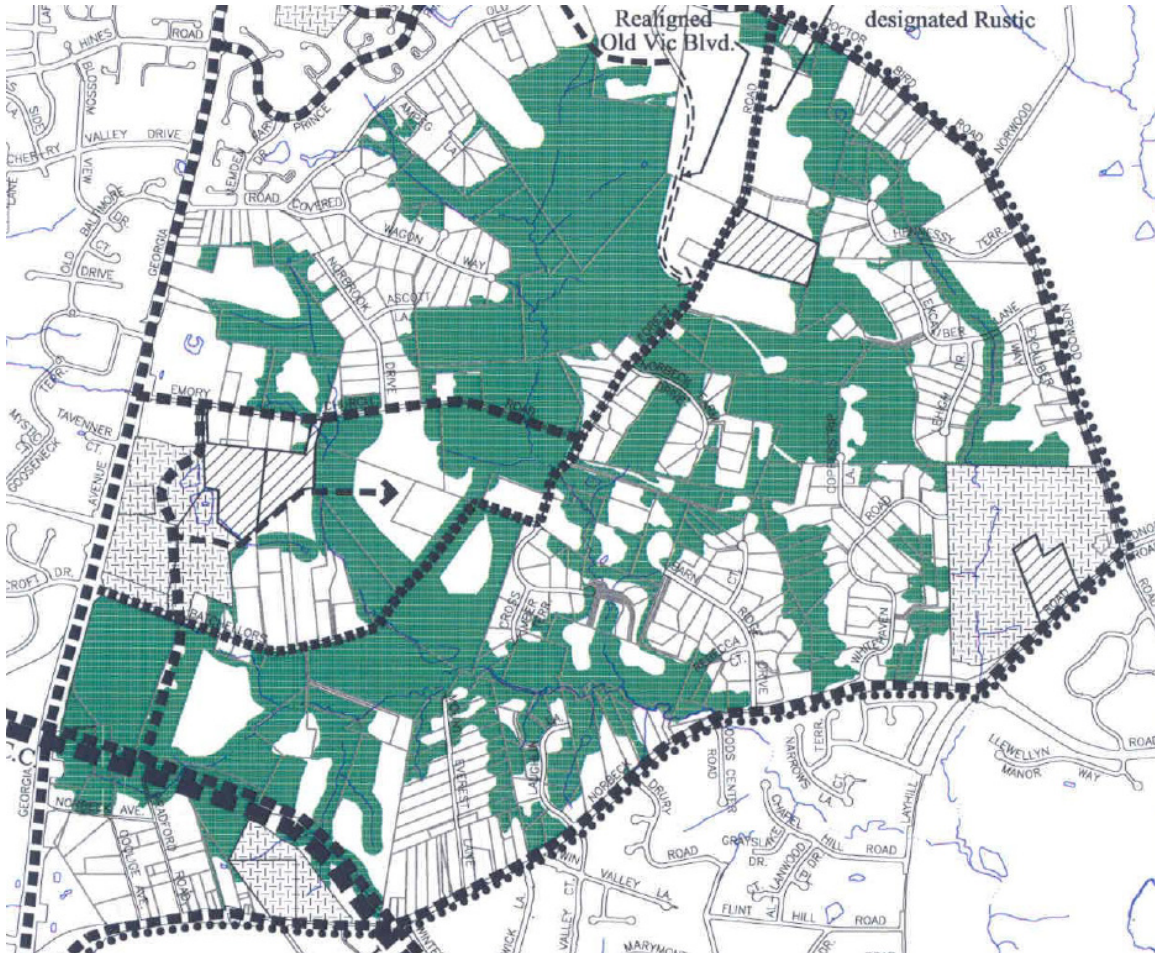
The 38.6-acre Danshes, the 14.3-acre Doherty, and the 8.0-acre Barnes properties are currently zoned RE-2. Since these properties cannot be served by public sewer through gravity, they are not recommended to be in the public sewer service envelope. Consistent with other similar properties in the Southeast Quadrant, they should be rezoned to RNC on septic systems and community water.

Recommendation:

Rezone the Danshes, Doherty, and Barnes properties to the RNC Zone on community water and septic with 0.2 units per acre.



The land use concept for the Southeast Quadrant is shown below (Plan, p. 24):



The Plan contains two different sets of design guidelines: one for development in the Southeast Quadrant and one for special exceptions. To protect the existing residential neighborhoods along Georgia Avenue between Norbeck Avenue and the Olney Town Center, the Plan calls for preserving Georgia Avenue as a “green corridor” to maintain its existing “semi-rural feel”. Plan, p. 41. The following additional guidelines apply to development in the Southeast Quadrant (Plan, p. 25):

- Cluster new houses away from sensitive areas.

- Minimize the fragmentation of forest by preserving contiguous forest areas covering more than one property...
- For properties along Georgia Avenue, provide a green buffer of at least 100 feet, outside the master plan right-of-way, to screen views of houses from the road.

The guidelines for special exception uses encourage are also designed to maintain the residential character of the area and protect the environment (Plan, p. 42):

1. Discourage special exception uses along Georgia Avenue between Norbeck Road and the Town Center to preserve its low-density residential character.
2. Minimize the negative impacts of special exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting.
3. Discourage special exception uses with excessive imperviousness levels.

With regard to the site-specific recommendation for the property, Technical Staff concluded approval of the sewer category change adequately addressed the concerns raised in the Master Plan (i.e., disruption of the stream valley due to the installation of gravity sewer). Exhibit 24, p. 8. Mr. Bossong testified that the Master Plan recommended development using a septic system to avoid extending a gravity sewer line through the environmentally sensitive areas. In his opinion, this recommendation stemmed from an assumption that single-family homes would be developed on the property. According to him, the WSSC typically prefers gravity sewer lines for residential subdivisions. It does not favor pressurized systems for residential subdivisions because the WSSC does not want to own and maintain individual residential systems. This petition addresses those concerns because the Petitioner is a single entity that is capable of owning and managing the system and the building envelope is clustered toward Georgia Avenue and away from the environmental features. T. 87-89.

Technical Staff concluded that the proposed use furthers the Plan's goal to provide a variety of housing for all ages. While the Plan discouraged special exception uses along this length of Georgia Avenue, Staff determined that the site layout reflects a "serious effort" to reduce the non-

residential effects of the proposed use. Exhibit 24, p. 9. In support of this, Staff noted that the design exceeds the 100-foot buffer from Georgia Avenue recommended by the Plan and found that the combination of forest preservation, natural topography of the property, and extensive landscaping along Georgia Avenue sufficiently mitigated the non-residential aspects of the use. *Id.* The Planning Board adopted Staff's findings and recommendations relating to Master Plan compliance. Exhibit 26.

E. Environment

As noted, there are several environmental constraints on the site. The majority of the tract (i.e., 35.15 out of 36.78 acres) is forested. The property drains to the Batchellors Forest Tributary of the Northwest Branch, classified as Use-IV waters. Staff advises that a large wetland and stream system is located to the east and south of the property, including a 100-year floodplain associated with the two stream channels. Some areas contain steep slopes. Exhibit 24, p. 10.

While the area is not subject to impervious surface limitations, Staff advises that the Petitioner revised the Plan to increase pervious area to fulfill the recommendations of the Master Plan and the Countywide Stream Protection strategy. This included redesigning the facility from a one-story to a two-story structure, reducing the amount of surface parking and the length of the pathway surrounding the building, and siting the facility closer to Georgia Avenue and away from the stream valleys. As a result, Staff advises that 84% of the property is open space, 27.23 acres of which is forest. Overall, the impervious area decreased from 13.2% to 10.9% of the property. Staff advises that approved residential developments in the RNC Zone have an average impervious area of 9 percent. *Id.* at 10.

Staff advises that the petition meets the requirements of the County's Forest Conservation Law (Chapter 22A of the Montgomery County Code). On October 3, 2013, the Planning Board approved a Preliminary Forest Conservation Plan (PFCP) and associated variance for the project. The PFCP approves clearing of 7.92 acres and retention of 27.23 acres of forest. Based on the

amount of clearing and retention, Staff advises that there is no forest planting requirement for the project.

The variance request approved by the Planning Board permits the Petitioner to remove two specimen trees of the 115 specimen trees located on the property and to impact (but not remove) 19 trees. Ms. Hannah Murray, the Petitioner's expert landscape architect, testified that eight of those trees are located on the historic property to the north. While some of these trees are much smaller than 24 inches in diameter, they are considered specimen trees because they are located on a historic property. One of these trees, a 7-inch non-native Mulberry, has a critical root zone impact greater than 30%, but they have marked it as being saved because small trees are more able to withstand this level of impact than mature trees. T. 56-57.

F. Noise

According to Technical Staff, Staff guidelines recommend a 60dBA Ldn goal for transportation generated noise impact on exterior spaces used by residents. The guidelines establish 45 dBA Ldn as the goal for interior noise levels. The Petitioner submitted a Traffic Noise Impact Analysis (Exhibit 25(m)) indicating that the exterior noise goal may be exceeded in areas near Georgia Avenue designated for outdoor recreation. Staff advises that a noise barrier analysis will be required at site plan. Staff reports that the interior noise level goal will be met without further mitigation.

G. Community Response

There is no opposition to this request. The Greater Olney Civic Association (GOCA) took the following position (Exhibit 24, Attachment C):

Whereas the site plan has changed and the building is now two stories with a smaller footprint and more open space, and whereas land adjacent to the Sandy Spring Fire Department was donated for future expansion of that station, GOCA supports the proposed use and the current site plan.

Sandy Spring Volunteer Fire Department, Inc., also submitted a letter supporting the request, stating that it was “very appreciative” of the land donation of approximately 4,761 square feet for a future station expansion. Exhibit 24, Attachment B.

III. SUMMARY OF TESTIMONY

The Petitioner presented expert testimony from Ms. Jennifer Russel, who qualified as an expert in land planning, Mr. Frank Bossong, an expert in civil engineering, Mr. Michael Lenhart, an expert traffic engineer, Mr. Bo Cook, representative of the Petitioner, and Mr. Edward Winks, an architect. Portions of their testimony are set forth herein where relevant. Their entire testimony is set forth in an appendix to this report, which is incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational

characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home (*i.e.*, an assisted living facility). Characteristics of the use that are consistent with the “necessarily associated” characteristics of domiciliary care homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with domiciliary care homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with a domiciliary care home as follows (Exhibit 24, p. 16):

- 1) Buildings and related outdoor recreational areas or facilities;
- 2) Parking areas;
- 3) Lighting;
- 4) Vehicular trips to and from the site by employees, visitors, residents, delivery, and trash pick-up;
- 5) Noise generated by equipment, including an emergency generator.

The Hearing Examiner accepts Staff’s list of impacts that are inherent in all domiciliary care

homes, although their impact will vary significantly according to the nature of the domiciliary care home, its size and its location. Staff identified one positive non-inherent characteristic, which is the small size of the development envelope and the large area reserved to preserve environmental features. While this may be considered for compatibility reasons, however, only adverse impacts are considered as part of this evaluation.

Nevertheless, the Hearing Examiner finds, as did Technical Staff, that there are no non-inherent adverse impacts of the proposed use that would warrant denial of the special exception. This is because the building's scale complements the surrounding residential characteristics, views from Georgia Avenue are minimized, adequate parking is available for the residents, visitors, and employees, and there are sufficient buffers from existing trees and additional landscaping to adequately screen the use. Exhibit 24. The Hearing Examiner agrees with Technical Staff that scale of the use here is not excessive and is well buffered visually by setbacks, landscaping and existing vegetation.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A domiciliary care home is a permissible special exception in the RE-1 Zone, pursuant to Code §59-C-1.31.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.37 for a domiciliary care home, as outlined in Part IV.C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The Master Plan contains some recommendations that could be interpreted to preclude the proposed use. The Plan discourages special exception uses along this portion of Georgia Avenue to preserve the “semi-rural” nature of the area. Technical Staff found that the proposed design and site layout preserves the existing character of the neighborhood because of the limited visibility from Georgia Avenue. Based on the evidence presented at the public hearing, the Hearing Examiner agrees with both the Planning Board and Technical Staff that the use will not affect the character of Georgia Avenue at that location, and would add that the large area of the site preserved enhances rural aspect of the area.

Site specific recommendations in the Master Plan called for low density development on septic systems. However, the evidence demonstrates that these recommendations stemmed from a desire to avoid a gravity sewer being extended through the environmentally sensitive area of the site. Technical Staff concluded that the design of this facility meets those concerns of the Plan, as evidenced by the approval of a water/sewer category change for the property. Exhibit 24, p. The

proposed use will be able to connect to public water and sewer, thus eliminating any need to disturb the stream valleys to the south and east, and preserves a large area of forest. The Hearing Examiner finds the proposed development substantially complies with the site-specific recommendations in the Master Plan.

The Plan contains two sets of design guidelines, one for development in the Southeast Quadrant and one for special exception uses. Those for the Quadrant call for clustering development away from sensitive areas, encouraging preservation of contiguous forest areas, and providing a buffer of at least 100 feet along Georgia Avenue to screen views from the road. The Hearing Examiner finds that the proposed use substantially complies with this because it “clusters” development on a small percentage of the site and preserves a much larger area containing forest, wetlands, stream valley buffers and floodplains. It also proposes a 300-foot setback from Georgia Avenue along with significant landscaping to minimize visibility from the road.

The Plan’s guidelines for special exception uses focus on minimizing non-residential aspects of the use to preserve the low-density, residential character along Georgia Avenue at this location. While special exception uses are discouraged, the Hearing Examiner finds that the proposed as designed will not adversely impact the low-density residential character of the area. Persuasive in this regard is the project’s limited visibility from Georgia Avenue, the photometric study showing that foot candles will meet residential standards at the property lines, the narrower building frontage along Georgia Avenue, and the residential character of the architecture. These guidelines also discourage excessive imperviousness levels. The Hearing Examiner agrees with Technical Staff that redesigning the facility to two stories (bring imperviousness levels only slightly above the average for residential development in the RNC Zone) substantially complies with the Plan’s guidelines for special exceptions.

As to the Plan's overall goals, Staff concluded that the development meets a primary goal to provide "a wide choice of housing types and neighborhoods for people of all income levels and ages and appropriate locations and densities." *Plan*, p. 15. The Hearing Examiner agrees that the proposed use fulfills this purpose by providing a higher level of care to specific populations.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded (Exhibit 24, pp. 22-23):

Considerable effort has been made to integrate the 136,736 square-foot Facility into the area in a manner that is compatible with existing residential developments in terms of scale, bulk, height, materials, texture and architectural features. The buildings' physical presence is substantially diminished by the sheer size of the 37.68-acre Property (which only about 11% of it would be developed), the integration of the natural topographic features into the designs of the buildings, and the overall site lay out of the development. Adequate off-street parking spaces are provided to satisfy the needs of the Facility.

The Hearing Examiner agrees with the conclusions of Technical Staff and would add that the evidence demonstrating the facility's limited visibility from Georgia Avenue and significant natural buffers to the south and east are particularly persuasive in this case.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II of this report and in response to General Standards 4 and 6, there is no evidence that the use, as proposed, will be detrimental to the peaceful enjoyment of surrounding properties.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that this standard had been met because noise-generating activities were not unusual for this type of use. The emergency generator is powered by natural gas which, according to Mr. Cook, is one of the quietest types of these generators. It will be located behind the assisted living facility in a masonry structure adjacent to the dumpsters. According to the Petitioner, it will be tested for readiness once a week for approximately 15-20 minutes. Technical Staff advises that the generator produces 70 dBA at a distance of 23 feet from the exhaust pipe and found that “it will be placed reasonably distanced from the building” so that it will not disturb residents. Exhibit 24, p. 24. The Hearing Examiner finds, based on this evidence, that the proposed use will not generate objectionable noise.

Mr. Bossong testified that light from the subject property would meet the residential standard of 0.1 foot candles or less at the property line and lights for the surface parking areas will have full cut-off fixtures, as demonstrated by the Lighting Plan (Exhibit 25(d)). Technical Staff found that noise levels in the recreational areas closest to Georgia Avenue may possibly exceed residential noise guidelines, but concluded that levels could be controlled, if necessary, through the use of a noise barrier that could be required at site plan review. Staff recommended a condition requiring trash pick-up times within the hours required by Chapter 48 of the Montgomery County Code, with which the Petition has agreed to comply.

For these reasons, the Hearing Examiner finds that proposed use at this location meets this standard.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The evidence reveals that there are at least 5 special exception uses in the neighborhood. These include another domiciliary care facility, approved in 2012, directly across

Georgia Avenue from the subject property, the Olney Golf Park along Emory Church Road, a major home occupation use located on Old Baltimore Road, and a Verizon public utility building located on Georgia Avenue. Exhibit 24, p. 25. Both Ms. Russel and Staff note that there is a daycare facility that would be a special exception use under current regulations, but is grandfathered and permitted by right. *Id.*

Technical Staff found that the proposed use would not change the existing character of the surrounding area because of its limited visibility from Georgia Avenue, the buffering provided by landscaping and topography, the residential nature of the architecture, and the minimal amount of traffic generated by the use. Exhibit 24, p. 25. The Hearing Examiner agrees and finds that this standard has been met.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site by adding a valuable service within the community, as found by Technical Staff.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The special exception sought in this case will require approval of a preliminary plan of subdivision and the adequacy of public facilities will be determined by the Planning Board at the time of subdivision. As required by the Zoning Ordinance, approval of the preliminary plan of subdivision is a recommended condition in Part V of this report.

Nevertheless, the evidence, which is discussed in Part II.C.6 of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public

services and facilities. The use will generate no more than 12 morning and seven evening peak hour trips. Both the Planning Board and DPS have approved a water/sewer category change permitting hook-up to public water and sewer facilities. Testimony from Mr. Bossong reveals that dry utilities are located within the Georgia Avenue right-of-way and the area is served by two police stations and the adjacent Sandy Spring Volunteer Fire Company. Based on this, the Hearing Examiner finds that public facilities will be adequate to serve the development.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
 - (i) *does not require approval of a new preliminary plan of subdivision; and*
 - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;**then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: As discussed above, the adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff concluded that site access will be adequate for the use. Exhibit 24, p. 27. Mr. Lenhart testified that the right-in, right-out entrance will not be a problem for those accessing the site from southbound Georgia Avenue because of the gaps in traffic created by the light at Emory Church Road. Having no evidence to the contrary, the Hearing Examiner finds that the use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 24) provide sufficient evidence that the specific standards required by Section 59-G-2.37 are satisfied in this case, as described below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see “Domiciliary care home”) may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

Conclusion: This specific standard is essentially a summary of the general standards 4, 5 and 6, above. For the reasons discussed therein, the Hearing Examiner finds that the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents.

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

Conclusion: Petitioner’s architect testified that the architecture mirrors the residential elements and uses materials found in the surrounding community. Technical Staff concluded (Exhibit 24, p. 29) that:

The exterior of the proposed buildings appear residential and incorporate several features of the single-family detached homes in the area including a residential type entrance, windows, and low roofing. The two-story Facility will have building [sic] façade complemented by accent panel of siding to maintain consistency with the residential character of the surrounding area. The proposed design of the buildings will be appropriate and relate well with the characteristics of existing residential uses as well as the low-rise nonresidential buildings in the area.

Based on this evidence, the Hearing Examiner finds that the proposed facility will be architecturally compatible with other buildings in the surrounding area.

(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

Conclusion: As previously discussed, Technical Staff concluded that the on-site generators are sufficiently distanced from the resident living areas to prevent adverse noise levels. They also concluded that, due to the specialty care provided, the use has been designed with a primary goal of creating a safe environment. Exhibit 24, p. 29. Mr. Cook testified that the emergency generator, powered by natural gas, is one of the quietest in the marketplace. Staff also indicated that noise levels from traffic will be further studied at site plan review, and mitigation will be required if they exceed Staff guidelines. Based on this evidence, the Hearing Examiner finds that this criterion for approval has been met.

(4) The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.

Conclusion: Not applicable. Petitioner proposes no resident staff employees.

(b) The following requirements must apply to a nursing home housing 5 patients or less:

* * *

Conclusion: Not applicable.

(c) The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.

(1) The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.

Conclusion: The proposed special exception exceeds these minimum requirements (i.e., 37.55 acres of net tract area or 1,635,678 square feet divided by 135 beds = 12,116 square feet per bed). Exhibit 37.

* * *

(3) *Minimum side yards are those specified in the zone, but in no case less than 20 feet.*

Conclusion: The site plan (Exhibit 37) demonstrates that the setbacks from the northern and southern property lines are a minimum of 106.11 feet and 117.8 feet, respectively. The proposal meets this requirement.

(4) *Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.*

Conclusion: The table of development standards included on the site plan (Exhibit 37, on the following page) demonstrates that the proposed use complies with all standards of the RNC Zone.

DEVELOPMENT STANDARDS			
Current Zone	RNC		
Gross Tract Area	37.68 ac.		
Area of Dedication	0.13 ac.		
Net Tract area	37.55 ac.		
Proposed Use	Nursing Home		
	Required	Proposed	
Dwelling Units	0.2/du per ac. or 7 units	107 Beds/Units	
WSSC Categories	W-1, S-3	*W-1, S-3 (1)	
Setbacks			
Minimum Lot Area	25,000 sqft	37.55 ac. or 1,635,678 sqft	
Minimum Lot Width			
Along Front BRL	100'	320'	
Along Street	25'	320'	
Front BRL	40'	*100' minimum from Georgia Avenue (2)	
Side BRL	10'	40'	
Rear BRL	35'	100' minimum	
Maximum Lot Coverage	10%	8.00%	
Maximum Building Height	35'	35'	
*Notes			
1. Category changed approved Montgomery County DEP memo dated July 5, 2011.			
2. Scenic Setback back from Georgia Avenue per 2005 Adopted and Approved Olney Master Plan			
Parking:			
Parking Required - 59 -G-2.37 (d)		Required	
1 sp per 4 Bed	135 divided by 4 = 34	34 spaces	
1 sp per 2 employees-largest work shift	100 employees divided by 2 =	50 spaces	
Total spaces required		84 spaces	
Motorcycle spaces required	100 automobile spaces provided x 2% =	2 motorcycle spaces	
Bicycle spaces or lockers required	1 space per 20 automobile spaces =	5 bicycle spaces	
Parking Provided		Provided	
		100 spaces (including 8 HC spaces)	
		3 motorcycle spaces	
		5 bicycle spaces	
Impervious Area:	Site Area =	37.55 ac.	
	Impervious Area =	4.07 ac. (10.85%)	
Openspace Area:	Site Area =	37.55 ac.	
	Openspace Area =	31.80 ac. (84.69%)	

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Conclusion: Petitioner proposes 135 beds and a maximum of 100 employees, requiring a minimum of 84 parking spaces. The site plan shows a total of 99 parking spaces, including six van-accessible and two additional accessible spaces. Technical Staff determined that the number of spaces provided

is “sufficient to accommodate the parking needs of 100 employees (full and part-time) as well as visitors. Exhibit 24, p. 31. The Hearing Examiner finds that the petition meets this standard.

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

Conclusion: Petitioner has provided a Site Plan meeting these requirements, the final version of which is Exhibit 37.

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

Conclusion: Petitioner is not proposing any expansions in the future; therefore, this requirement does not apply. Exhibit 24, p. 31. Any future expansions would require a modification of this special exception.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the Petitioner, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The petition meets the development standards of the RNC Zone, as set forth above.

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As discussed above, the applicable parking standards for the number of parking spaces have been met.

*(c) Minimum frontage * * **

Conclusion: Not applicable.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The proposed special exception must comply with the preliminary forest conservation plan which has been approved by the Planning Board. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of approval of the Preliminary Forest Conservation Plan (Exhibit 26), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the Petitioner, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: The property is not located within a special protection area, thus, no water quality plan is required. The Petitioner has prepared a stormwater management concept plan demonstrating that the proposed use will be able to meet current stormwater management requirements.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner proposes a monument sign at the entrance to the facility at Georgia Avenue. Technical Staff corrected its original report (Exhibits 24, 26) that included a condition requiring the Petitioner to seek a variance from the residential sign standards, but did not submit a revised condition. The Hearing Examiner recommends the following condition in Part V of this report:

Petitioner must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If the design is amended, a diagram showing the amended design must be filed with the Board.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: Not applicable because the RNC Zone is an agricultural zone.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Again, because the property is within an agricultural zone, these standards technically do not apply. Nevertheless, the Petitioner did submit a Lighting Plan (Exhibit 25) demonstrating that lighting for the facility will not exceed residential standards.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: Not applicable.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2841, seeking a special exception to permit establishment and use of a domiciliary care home on Parcel P771 on Tax Map HT5, Tax Account No. 08-00723142, located on the east side of Georgia Avenue approximately 1,000 feet south of its intersection with Old Baltimore Road in Olney, Maryland 20832, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report.
2. The maximum allowable number of residents (beds) must not exceed 135 beds.
3. The maximum number of employees on-site at any one time must not exceed 50 employees.
4. Garbage/dumpster pick-up must be limited to the times and days set forth in Chapter 48 (Solid Wastes) of the Montgomery County Code.
5. The Petitioner must comply with all requirements of Chapter 31B of the Montgomery County Code (Noise Control).
6. The Petitioner must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code; if changes to the special exception site plan (Exhibit 37) or other plans filed in this case are required at subdivision,

- Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
7. All development of the site must comply with Petitioner's Site Plan (Exhibit 37), Lighting Plan (Exhibit 25(d)) and Landscape Plan (Exhibit 25(c)).
 8. Deliveries by semi-trailer trucks shall not exceed six times a week.
 9. Petitioner must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If the design is amended, a diagram showing the amended design must be filed with the Board.
 10. The proposed development must comply with the Preliminary Forest Conservation Plan and all conditions of the approval (Exhibit 26), and Petitioner must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
 11. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly.
 12. Petitioner must maintain 99 parking spaces called for in its Site Plan (Exhibit 37), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception.
 13. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 1, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Lynn A. Robeson', with a long horizontal line extending to the right.

Lynn A. Robeson
Hearing Examiner

APPENDIX

Summary of Testimony

1. Jennifer Russell:

Ms. Russell qualified as an expert in land planning. T. 14.

She described the subject property and the surrounding land uses. The subject property consists of 37.68 acres, approximately 35.5 acres of which is existing forest. Immediately to the north is a historic, pre-civil war landmark, known as the Berry-Mackall House. The area north and east of the subject property is within the RE-2 Zone characterized by large lot single-family homes. Vacant parcels along the southern portion of the site continue the RE-2 zoning. In addition, the First Baptist Church (Parcel 77) is zoned RNC. Properties located on the south side of Emory Church Road, adjacent to and east of Georgia, are single-family lots in the RE-2 Zone and the property at the northeast corner of Emory Church and Georgia Avenue is improved with the Oakdale Emory Church in the RE-2 Zone as well. T. 15-18.

The primary zoning along the west side of Georgia Avenue is R-200, except for a small commercial area zoned C-1 just north of Emory Church Road. The west side, according to her, contains a “mélange” of uses, including a special exception for a 64-bed domiciliary care facility directly across Georgia Avenue from the subject property. There is also an existing daycare that was originally a special exception, but has since been grandfathered in as a permitted use. T. 18-19.

According to Ms. Russell, the area zoned R-200 on the west side of Georgia Avenue is very different in character from the RE-2 development located along Norbrook Road. The single family homes in the area were built between 1950 and 1985 and have a mix of wood, siding and brick materials. They are generally one- and two-story suburban homes.

The non-residential uses on either side of Georgia Avenue vary in terms of style and building materials. The fire department, located immediately south of the subject property, is a two-story, wood-constructed building with a brick façade.

The single-family homes on both sides of Georgia Avenue use the non-residential services that line Georgia Avenue and combine to create the character of the neighborhood. T. 18-20.

Ms. Russell testified that the subject property was rezoned from the RE-2 to the RNC (Rural Neighborhood Cluster) Zone in the sectional map amendment implementing the 2005 Olney Master Plan. The RNC Zone, she opined, is focused on preserving environmentally sensitive natural resources and open space. Its purpose is to implement the design for the property recommended by the Master Plan. T. 21.

Ms. Russell described the physical characteristics of the property. It is irregularly shaped with 300 feet of frontage along Georgia Avenue. It is currently undeveloped and contains a large area of forest. The highest point on the site (at 550 feet) is adjacent to the access from Georgia Avenue. The low point falls off to the southeastern corner (at 462 feet). Some steep slopes exist near Georgia Avenue and a meadow falls back there to the forested area. T. 21-22.

She testified that the proposed building will be setback approximately 300 feet from the right-of-way line along Georgia Avenue. Because of this setback and the buildings' 75-foot frontage, grades and landscaping, individuals will only see the roof from Georgia Avenue. The forested portion of the site is located in two basic areas and contains approximately 115 specimen trees. T. 22-23.

Ms. Russell opined that the proposed facility meets all of the criteria for optional method development in the Zoning Ordinance. Those applicable to the proposed development require a minimum land area of 10 acres and minimum setbacks of 15 feet from the right-of-way. The lot consists of 37.68 acres and is setback 307.6 feet from the Georgia Avenue right-of-way, so these

requirements have been met. The Master Plan calls for an additional buffer of 100 feet along Georgia Avenue; this has also been met. The Zoning Ordinance requires a rear yard setback of 30 feet and side yard setbacks of 17 feet; the proposed facility has a rear setback 430.5 feet and the smallest side yard setback is 106.11 feet. Thus, the layout of the facility far exceeds all of these parameters. T. 24-25.

The Zoning Ordinance limits building heights in the RNC Zone to 35 feet and lot coverage to 10% of the total lot area, according to Ms. Russell. The proposed domiciliary care home is at the maximum height and covers 8% of the lot area. Rural open space design guidelines also require that a minimum of 65-85% of the lot consist of contiguous open space. The petition meets this requirement. T. 26.

Ms. Russell described the proposed development. She testified that it will have 107 units with a maximum of 135 residents. The building is broken into two sections connected by a covered causeway. The building closest to Georgia Avenue will house the assisted living facility. The specialty care section is located to the east of the assisted living facility. Eighty-five of the residents will be in the assisted living portion and 50 will be within the specialty care section. Some of the units may house more than one individual. The building will be two stories containing approximately 136,750 square feet. One hundred parking spaces will be provided along the northern portion of the facility. T. 26-28. She opined that the facility is a domiciliary care facility under the Zoning Ordinance rather than a group home. The domiciliary care facility and nursing home are permitted as special exceptions in the RNC Zone. T. 26-30.

Ms. Russell testified that the proposed use substantially complies with the 2005 Olney Master Plan. The Master Plan contains site-specific recommendations for the property based primarily on the assumption that it could not be connected to public water and sewer by gravity. For this reason, it was rezoned to the Rural Neighborhood Zone to permit development on septic and well systems. T. 31.

The Master Plan also contains guidelines related in general to special exceptions, according to Ms. Russell. The Master Plan discouraged approval of special exceptions along Georgia Avenue between Norbeck Road and the Olney Town Center in order to preserve a residential character in the area. Even though this property is located within that area, in her opinion, the design of the building and layout of the site minimizes its impact from Georgia Avenue. The building has a classically proportioned façade, residentially styled, with upscale materials that characterize the community. T. 32. This design combined with the facility's minimal visibility from Georgia Avenue meets the concerns of the Master Plan, in her opinion. T. 32. The site layout will also maintain the residential character of the neighborhood to the north and south because of the extensive setbacks and heavy tree canopy and landscaping. T. 32-33.

Ms. Russell testified that the Master Plan also sought to minimize the negative aspects of special exceptions by calling for smaller scale buildings with a residential character, and reducing the visibility of parking lots and lighting. According to her, this development accomplishes this because the 75-foot building frontage on Georgia Avenue is narrow and there is no parking between the building and the street.

She additionally opined that the proposed development meets the Master Plan guidelines discouraging special exception uses with excessive impervious levels. The site was redesigned from a one-story to a two-story facility, thus reducing the impervious area from 13.2% to 10.85%. T. 33.

The Master Plan also recommends that the area along Georgia Avenue between Norbeck Road and Route 108 should have an open, semi-rural appearance to mark the transition from the more densely populated areas to the north. To accomplish this, it also calls for a 100-foot setback from the

Georgia Avenue right-of-way. The Plan also calls for additional landscaping along Georgia Avenue to ensure that views from the road are of trees and vegetation rather than houses or buildings. In her opinion, grade of the site, the proposed landscaping, the building design and setbacks will ensure that most of the building's façade will be invisible from Georgia Avenue. T. 34-35.

Another Plan guideline seeks to eliminate a halo or night glow from lights produced by excessive lighting. The lighting plan calls for the combined light poles and fixtures to be approximately 15 feet high; the fixtures will cause the light to be cast downwards. T. 35.

Ms. Russell stated that she disagreed with Staff's delineation of the surrounding area. In her opinion, the appropriate delineation should be Old Baltimore Road to the north, Norbrook Drive to the east, Emory Church Road to the south, and the rear property lines of the houses on the west side of Georgia Avenue, south to Emory Church Road. T. 36-37. This is the area that she believes creates the activity that is focused on Georgia Avenue and is a very pastoral setting, in keeping with the nature of the site. Nor does she agree that the area on the west side of Georgia between Emory Church Road and Georgia Avenue should be included within the neighborhood. Staff included that area because it was the same boundary used for the domiciliary care facility located on the west side of Georgia Avenue; at the time, Emory Lane was the nearest signalized intersection. Since then, a traffic light has been installed at Emory Church Road, which she believes validates her delineation of the surrounding area. According to Ms. Russell, the proposed use primarily impacts the east side of Georgia Avenue. T. 39-40.

Ms. Russel identified the other four special exceptions within the surrounding area. One is the Olney Golf Park, adjacent to the south side of the fire station. A long-standing home occupation beauty parlor is located in a single-family home on the west side of Georgia Avenue. A Verizon public utility building is located just north of the property zoned C-1, and there is a 64-bed domiciliary care facility located directly across Georgia Avenue from the subject property. T. 40-41. She opined that the proposed use would not increase the density or scope of special exception uses in the neighborhood because of the site layout and building design. T. 42. Nor did she believe that it would adversely impact the residential character of the area. She does not believe it will affect the health and safety of the residents of the area; rather, it will enhance housing services for those within the community. She stated that the senior population in Montgomery County is expected to increase significantly between 2010 and 2020, and by as much as 38% by the year 2030. The use proposed will allow residents to age within the community, a land use goal that has been adopted by the County and the Master Plan. T. 44-45.

She opined that the proposed use meets all of the special conditions listed for domiciliary care facilities. These facilities generate little traffic, the architecture is compatible with the surrounding neighborhood, and the site layout minimizes exposure to the surrounding area. The grading and the landscaping minimize the full height of the two-story building and the extensive setbacks will adequately protect surrounding residents from noise, air pollution and other impacts of the use. T. 46. They have provided all of the required number of parking spaces on-site. T. 46-47. She believes that the conditions of approval recommended in the Technical Staff Report are appropriate. T. 47-48.

2. Hannah Murray:

Ms. Murray qualified as an expert in environmental planning and landscape architecture. T. 50. She agreed with the findings and recommendations of the Technical Staff Report on the Preliminary Forest Conservation Plan. She also agreed with the Planning Board's approval of the Plan. T. 53.

She testified that County's Forest Conservation Law does not require any afforestation for this development because of the large amount of existing forest. The reforestation threshold for the

project is 7.59 acres. There is also a “sweet spot”, or an amount that may be cleared without triggering the need for additional mitigation because the mitigation owed is cancelled out by the area saved above the threshold. The “sweet spot” for this development is 13.1 acres and the Petitioner will retain 27.23 acres, well above the “sweet spot.” T. 54-55. She also stated that the tract area for the purposes of calculating forest conservation requirements is 37.96 acres because it must include disturbed areas outside the lot, such as the improvements along Georgia Avenue. T. 55.

She described the variance from the Forest Conservation Law approved by the Planning Board. The Petitioner requested a variance to remove two of the 115 specimen trees located on the property. In addition, the variance approved permits the Petitioner to impact the critical root zones of 19 specimen trees. Eight of those trees are located on the historic property to the north. While some of these trees are much smaller than 24 inches in diameter, they are considered specimen trees because they are located on a historic property. One of these trees, a 7-inch non-native Mulberry, has a critical root zone impact greater than 30%, but they have marked it as being saved because small trees are more able to withstand this level of impact than mature trees. T. 56-57.

The two on-site specimen trees to be removed are near Georgia Avenue and are impacted by the access drive. Other trees along the drive will experience some impacts, but are not proposed for removal. Other trees are impacted due to the tractor trailer turnaround and a stormwater facility. T. 58-59.

Ms. Murray described the proposed landscape plan. The open space required by the RNC Zone consists of land that’s managed for environmental benefits such as reforestation, stream restoration or left untouched. T. 61. Two streams run through the property, and the development plan preserves a large amount of existing forest and the stream valley buffers. New landscaping will consist of a spectrum of plantings to buffer the use from Georgia Avenue. New landscaping will be planted to buffer the fire station to the south and street trees will be located along the access drive and parking lot to combat urban heat. T. 62-63.

3. Michael Lenhart:

Mr. Lenhart qualified as an expert in traffic engineering and transportation planning. T. 64.

He described the road networks and critical intersections surrounding the site. Georgia Avenue at the subject property is a 4-lane divided highway. There is an existing crossover several hundred feet south of the property at the fire station. The proposed access will be right-in, right-out along the east side of Georgia Avenue. Traffic proceeding southbound along Georgia will make a U turn at the fire station crossover and take a right-in from Georgia Avenue. T. 66.

Mr. Lenhart stated that he had been the traffic engineer for the domiciliary care special exception directly to the west of the property across Georgia Avenue. At the time of that approval, the signal at Georgia Avenue and Emory Church Road had not been installed. While a traffic study was not necessary for that project, he opined that it was likely that the transportation area had been defined by the next traffic light to the south, thus expanding the delineation of the surrounding area. T. 67.

According to Mr. Lenhart, the Master Plan does not contain any specific recommendations for the subject property. It identifies Georgia Avenue as M-8 roadway. Its existing configuration and right-of-way are built to the Master Plan standards. T. 67-68.

A final determination of the adequacy of the roadway network will take place at the time a preliminary plan for the subject property is approved. The current Subdivision Staging Policy contains two tests to determine whether transportation facilities are adequate. Transportation Policy

Area Review (TPAR) looks at roadway and transit adequacy within the applicable policy area. The current standards conclude that there is a 25% deficit in transit capability within the applicable policy area. Because of this, the Petitioner will be required to pay a traffic impact tax to be used to mitigate that transit deficit. The Petitioner is willing to pay that tax. T. 69.

The second test, Local Area Transportation Review (LATR), does not mandate that the Petitioner perform a traffic study because the use will not generate more than 30 peak hour trips. If one were required, the intersections studied would include Georgia Avenue at Emory Church Road and Georgia Avenue at Old Baltimore Road. Because traffic rates for assisted living facilities are low, the proposed use is expected to generate only 12 morning peak hour trips and six evening peak hour trips. In his expert opinion, even though Georgia Avenue is generally a busy corridor, site-generated traffic will have very little impact on existing conditions. He does not think that the U-turn for southbound Georgia Avenue traffic will create congestion because the traffic signal at Georgia Avenue and Emory Church Road creates gaps in the northbound traffic. T. 70-72.

He stated that the State Highway Administration (SHA) requested the Petitioner to perform a site distance analysis. Based on his analysis, site distance will exceed SHA requirements and the SHA has accepted this analysis. T. 73.

4. Mr. Frank G. Bossong, IV:

Mr. Bossong qualified as an expert in civil engineering. He prepared the preliminary stormwater management concept plan for the facility. According to Mr. Bossong, the development will be subject to new storm water management regulations that require Environmental Site Design (ESD) to the Maximum Extent Practical (MEP). The Petitioner proposes to utilize a three-component tiered system. The three components include a dry well, which will take the roof water and put it into dry wells to infiltrate back into the ground, porous pavement in the parking areas to permit water to infiltrate into the ground, and bio-retention facilities. The latter are small, low planting areas that collect stormwater and remove the pollutants. These also serve as a ground water recharge facility. T. 77. They prepared the plan, in part, to make sure that storm water management would not impact additional specimen trees or forest on the site. This plan has been submitted to DPS for approval, but no definitive approval has yet been given. DPS verbally indicated that the first stormwater management concept (based on the one-story building with larger coverage); as this will have less impact, he opined that this should be approved as well. T. 81. He testified that, while he does not believe approval of a stormwater management concept plan is required for a special exception, all the current storm water requirements may and will be accommodated on the site. T. 82.

Mr. Bossong described the utilities that will serve the site. All of the dry utilities (e.g., electricity, telephone, etc.) are located along Georgia Avenue. Police and fire utilities are adequate. There is a full police station to the south along Georgia Avenue and a satellite office at the intersection of Georgia Avenue and Route 108. A fire station is adjacent along the southern property boundary. T. 93. They have met with representatives of Montgomery County Fire and Rescue Services, who have tentatively approved the location of the access drive. They will issue a more detailed approval at site plan. The access road is a private driveway that will be maintained by the Petitioner. T. 94.

He described the public water and sewer lines near the property. There is an existing 16-inch pressure water line within Georgia Avenue and an existing 8-inch sewer line just south of the entrance to the fire station. Previously, the property had a water/sewer category of W-6/S-6. In June, 2011, a category change to W-1/S-3 was conditionally approved. The approval conditioned the category change on approval of a preliminary plan for the clustered form of development depicted on the site plan.

The Petitioner proposes to utilize public water and sewer to serve the development. Because the existing water line is already pressurized, he opined that there should be no problem hooking up to that line even though the grade of the site slopes downward from Georgia Avenue. The grade prevents the Petitioner, however, from using gravity sewer to hook up to the sewer line within the right-of-way. As a result, the Petitioner is proposing using a pressure system to collect on-site sewage and force it to the gravity line along Georgia Avenue. T. 82-86.

Mr. Bossong testified that the Master Plan recommended that the property be developed using a septic system because it could not utilize a gravity sewer line. In his opinion, this stemmed from assumption that single-family homes could be developed on the property. The WSSC prefers gravity sewer lines, which could serve the sight but would have to be extended through the stream valleys and have a significant impact on the site's environmental features. The WSSC disfavors pressurized systems for residential subdivision because they do not want to own and maintain those systems. Because the Petitioner is a single entity, however, and the building envelope is clustered toward Georgia Avenue and away from the environmental features, they would not have to own and maintain the pressurized system. T. 87-89.

Mr. Bossong also described the proposed Lighting Plan for the property. Even though he does not believe that standard for the amount of foot candles permitted at the property lines (i.e., 0.1 foot candles or fewer) applies to the RNC Zone because the zone is agricultural, he testified that the photometric study confirms that the residential requirements will be met. T. 91.

He also opined that the lighting is residential in nature. The fixtures are low lantern with cut-offs in the globe to direct light downward. T. 93.

5. Edward H. Winks, Jr.:

Mr. Winks qualified as an expert in architecture. He has worked with HHHunt since the early 1970's designing assisted living and Alzheimer care facilities in several states. T. 98.

According to Mr. Winks, the building has basically two components, an assisted living building and a "special" or "memory" care building that are connected by an interior walkway. From the exterior, the two components appear as one building designed to be very residential in nature. The Georgia Avenue façade appears as a two-story residential structure because of its narrow width. The scale of the other facades is broken up with residential elements using materials such as brick and siding similar to those in the surrounding neighborhood. T. 98-100.

He took advantage of the existing grade by creating a subterranean level similar to a walkout basement. This will include the kitchen and a theater, staff and support facilities, laundries, medical offices, therapy areas, and an indoor pool or spa. They have attempted to use windows in locations which will be visited by the residents, especially along the area facing the environmentally sensitive features of the site.

The main level will have a central entrance with residential units on each end. Each end will have a small sitting area. Common spaces include a living room off the entrance and a café that leads to a sunroom. The dining room has an outdoor terrace overlooking the green space to the east, with a small server. A private dining room and a wellness area (similar to a fitness center) are also located on this level.

Individual apartments for the residents are located above the main level on two wings. Also included are small stores, a puzzle room, a salon, and a multi-roomed library. He stated that this is the most extensive amenity package the Petitioner has ever provided in one of its assisted living

facilities. The residential units will be both one-bedroom and studio units. Each has a kitchenette and bathroom, but they expect that everyone will be eating in the main dining room. T.101-102.

The memory care building has a central entrance as well. Although initially designed on one level, he was able to put everything on two levels at the request of the neighborhood. Essentially, this building has two first floors, each having its own serving kitchen and support facilities and a living room at each end that connects to an outdoor terrace area. There is also a family room, nurse's facilities, and an activity room on each floor. The most prominent exterior feature is the elevated porch, although the building has been fragmented into residential scale components. Different types of windows are used throughout the facilities to break up the scale, including arched windows in the library. He opined that the proposed development will not cause objectionable noise, vibration, odor, dust or fumes. T. 104-106.

6. William Robert Cook, Jr.:

Mr. Cook testified that he is the Vice President of Development for the Petitioner. He has been with the HHHunt Corporation for 25 years and has worked on development of 26 or 27 assisted living facilities. T. 107. He testified that the Petitioner will abide by all conditions of approval placed on the special exception, if approved.

He described the operations of the assisted care and Alzheimer's dementia care facilities. This facility will have approximately 100 employees that are on three primary shifts divided into several sub-shifts. Utilizing these shifts, he believes that the Petitioner will be able to meet the recommended condition that no more than 50 employees be on-site at any given time. There will also be events throughout the year for families to come and share with the residents. These will be held at off-peak hours and will be structured around traffic congestion. They typically will have a "bulk" move-in when the facility first opens which occurs over the first four weeks. These move-ins typically do not exceed more than 30 residents a day, and may normally be about 10 per month. Once the building is initially filled, they generally have four to five move-ins per month. These move-ins would be scheduled during off-peak hours as well. T. 112-113.

The facility has a very sophisticated security system that monitors the movements of the assisted living residents and a more intense system for the memory care patients. The building will be fully sprinklered and they will have fire alarms throughout. The outdoor courtyards in the memory care building are secured and have sitting areas and a small walking path. These are monitored by cameras and staff stations located nearby. T. 114.

The facility will include a walking path that surrounds the building as well. They attempt to design areas along that path to invite residents to stop and sit. Many of these are in the front of the building, but they have some in the rear to take advantage of the views of the wetlands area. T. 114.

The noise study submitted showed that the facility would meet the residential noise levels, but this will be studied more closely at site plan. The primary noise related issue occurred in the passive recreational area or open space toward the front of the building near Georgia Avenue. They may install additional landscaping or noise mitigation fencing at that location. T. 115. The Landscape Plan identifies these areas as "gathering places". T. 116.

Mr. Cook testified that the facility will have a generator designed to be large enough to preserve prepared food and to maintain heating and cooling in certain areas. The generator is located on the southern side of the assisted living building near the service entrance on the lower level. It will be in an enclosure next to the dumpster. They use a generator powered by natural gas because that type of generator operates most quietly. T. 118-119.

The Petitioner proposes an entry sign near the entry road. Further into the site, there will be smaller directional signs. It is his understanding that no variance will be needed for the proposed entry sign because the RNC is an agricultural rather than a residential zone. T. 120.

Mr. Cook agreed with the Planning Board's recommended condition limiting semi-trailer truck deliveries to 6 times per week. He clarified that the memory care facility permits companions to stay in the dwelling units because they have found that Alzheimer's patients function very well with a roommate. T. 122.